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REVISED RECORD
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fraud, to disloyalty to the people and to deception. We are going continually from bad to worse, and this fact is forcing itself upon the tax-paying public with strong insistence. Sentiment is crystallizing, and thinking men and women in all sections, men who are not frightened by political bugbears, men in all stations, are coming to see in the abolition of tax exemptions a practical and wise solution of a serious problem. The adoption of this amendment would be effective in removing an unjust discrimination against those who are least able to pay, would prevent exemptions being made the basis and incentive for profitable individual and institutional speculation, and would add to the State's financial resources a material, continual and fruitful source of revenue.

Mr. Wickersham — It seems to me to be wholly useless and a repetition to recite that no property shall be exempt from taxation except as expressly provided by law, and I hope the gentleman will consent to strike out that sentence, but I move that it be done.

Mr. M. Saxe — Upon the interpretation now made by the gentleman from New York, it is agreeable to me.

Mr. Wickersham — Then I understand that that amendment is accepted, Mr. Saxe?

Mr. M. Saxe — Yes.

The Chairman — Then the motion is on the adoption of the section as read by the Secretary, excepting that —

Mr. Wickersham — One moment, Mr. Chairman, I have not finished the discussion of the section. I understand that the amendment is accepted. I then renew my motion, or rather call attention to the motion I made a little while ago to amend the section by inserting on line 8 after the word "repeal" the words "but without prejudice to any agreement of exemption heretofore made under authority of such laws."

Mr. Cullinan — I would like to ask the Chairman of the Committee on Taxation a question in regard to this section. I desire that he should give us a little light on this situation. Many of the canal bonds sold by the State are exempt from taxation. When these bonds are in the hands of private owners, I would ask as to what he considers the force of the sentence in the first section reading "Laws granting exemption from taxation, whether heretofore or hereafter enacted, shall be subject to modification or repeal." Do you contend that those bonds may be taxed hereafter?

Mr. M. Saxe — Mr. Chairman, I contend that if those bonds were sold under an agreement on the part of the State, they could not be taxed. That is a contract which cannot be repealed.

Mr. Wickersham — Will not the amendment which I have just moved, if adopted, embrace the case that Delegate Cullinan has suggested?

Mr. M. Saxe — Without any question.

Mr. Wickersham — That is one of the matters, Mr. Chairman, which would be clearly disposed and removed from the realm of conjecture, if this amendment which I have moved be adopted.

Mr. Austin — I hope that the amendment suggested by General Wickersham will not prevail, and I do hope that this entire sentence will be stricken out of this section. It appeals to me as a perfectly ridiculous declaration to put into a Constitution. I think that most lawyers are agreed that, as an ordinary proposition, a law is subject to modification or repeal, and I do not think it is necessary to say in the Constitution that a law is subject to modification or repeal. We all will concede that if the modification or repeal of a law would impair the obligation of a contract, then that modification or repeal would not be effective under the Federal Constitution. If it will not impair the obligation of a contract, of course the Legislature can modify it, or repeal it, without any insertion of this kind in the Constitution.

Mr. M. Saxe — Does not the gentleman realize that when these laws, which are really only governmental policies, but which grant exemptions, are taken advantage of, and the State seeks to repeal them because of some exigency subsequently arising, they are met with the proposition that there is a moral obligation. Now, if you have it in your Constitution that these laws are repealable, you are giving notice to the people that if they do take advantage of such legislation, it may be repealed; and the effect of it, the very effect of putting the language in the Constitution, will be to stop the Legislature from enacting such unwise legislation in the future.

Mr. Austin — Mr. Chairman, I wish to say that I, as a delegate to this Convention, am not here for the purpose of inviting the Legislature to repeal its moral obligations, and if moral obligations exist and the argument in favor thereof appeals to the legislators, they will not repeal these laws. If the argument does not appeal to them, and they do not impair the obligation of a contract by repealing or modifying, then they may very properly, if circumstances justify it, modify or repeal such laws. But to put such an assertion in the Constitution — I agree with the delegate from New York, Mr. Nicoll, who properly characterized it by calling it “constitutionalizing the *status quo*.” I think it is perfectly ridiculous. I move to strike out the words on lines 6, 7 and 8, beginning with the word “Laws” and ending with the word “repeal.”

Mr. M. Saxe — I hope that I can make this proposition clear. I am quite in accord with Mr. Austin in not inviting the Legislature to repeal its moral obligations.

What I want to do is to prevent the Legislature from enacting revenue systems in the future depending upon moral obligation. Let them make exemption contracts, or exemptions, which are honest, which are fair to the people, but not make exemptions which may be repealed and then say, "Don't do it because it is a moral obligation."

Now the way to do, in my opinion, is to make it clear to the people by putting it into the Constitution that such legislation is subject to repeal, and then no Legislature will enact such legislation.

Mr. Wagner — This proposed provision, this sentence would also affect any exemptions which were made or given to State bonds, for instance, wouldn't it? So that if at any future time the State in order to secure a market for its bonds, wanted to give an inducement to its citizens to make that security a preferred security, and pass an act exempting them from taxation, it would really be ineffective, because the ordinary purchaser would say, well, what assurance have I that that exemption is going to continue, because in the Constitution there is a provision that next year the Legislature may repeal that act, and although I buy this bond upon the theory that it is exempt from taxation, I have no assurances, because of this provision in the Constitution.

Isn't this provision apt to be detrimental to the State and an interference with the Legislature in doing something for the benefit of the State?

Mr. M. Saxe — Mr. Chairman, there is no doubt in my mind that where the State offers its security with that exemption attached thereto, that it is a contract on the part of the State and the United States Courts would so hold it. You must distinguish between a governmental policy and a contract. Now, let me cite you an instance. Take the well known case of Roper in 55 New York. Now there, in 1854, or thereabouts, the Legislature granted to the militiamen of the State of New York an exemption of \$500 if they served seven years in the National Guard and were honorably discharged.

In 1865, because the State needed money — because the localities needed money, that exemption was repealed and the question at once arose as to whether or not it was a contract, and the Court of Appeals held no. It was no contract, because every person in the State, certainly every citizen is liable to military duty, and they gave nothing to the State in getting that exemption, but where the State holds out its own securities and says that these securities are sold with the understanding that they are to be exempted from taxation, I would say that that is a contract and that it is irrepealable.

Mr. Wagner — It would not be a contract, if you had this provision in the Constitution, because the purchasers would have notice of this provision, and, therefore, the legislative enactment exempting from taxation would give no assurance to the bondholders and no certainty to the security.

Mr. M. Saxe — Mr. Chairman, the answer to that is that the United States Supreme Court has held those agreements to be contracts. It would be a contract under the Federal Constitution.

Mr. Wagner — Mr. Chairman, I want to differ with the gentleman that the Federal Constitution would have anything to do with it, because this provision of the Constitution would be one of the provisions, implied provisions of the contract which we entered into with the bondholders, and, therefore, its repeal at some future time would not be an impairing of the obligation of the contract, because this very provision of the Constitution would be read in as one of the provisions of the contract. I think, if Mr. Marshall agrees with me, that is sufficient.

Mr. Marshall — I agree thoroughly with Mr. Austin, and so far as you agree with him I agree with you.

Mr. Wagner — That is not entirely satisfactory.

Mr. Reeves — I think the Convention ought to give some consideration to the history which is involved in this proposed amendment. The history briefly put, which leads up to this sentence which General Wickersham has proposed, as an amendment, shows, I think, that we have reached in New York the point of time where it is fair and logical and moral for the people of this State to put this kind of declaration into the Constitution.

In 1901, we made the amendment which is now subdivision 13 of Section 18 of Article III of our present Constitution. That provides as follows: "The Legislature shall not pass private or local bills in any of the following cases: Granting to any person, association, firm or corporation, an exemption from taxation of real or personal property."

The policy that was laid down in that amendment was to do away with all private and local bills, to grant any exemption. There came up under that the case of *The People against Raymond*, 126 Appellate Division, page 720, and Judge Clarke of the Appellate Division writing a one-quarter page opinion said this: "It is clear that the constitutional provision passed after the adoption of the general tax law is in harmony therewith and is the best evidence of the public policy of the State. When it passed the tax law the Legislature repealed the special exemptions and by adopting this amendment to the Constitution, the bill prohibited the passage in the future of any special exemption from taxation."

Now, it has been held by the Supreme Court of the United States over and over again, and over and over again by the Court of Appeals of this State, that any merely general law, such as the Mortgage Recording Tax Law, such as the Secured Debt Tax Law, is to be presumed to be merely a law and not a contract.

In 1905 the State of New York provided that all owners of mortgages who would take them and go through certain formalities of recording and getting their certificate and receipt, paying therefor one-half of one per cent. on the amount of the mortgage, should be forever exempt.

In 1906 that law was repealed and it was emphatically held, the late Judge Gaynor writing the opinion, that that did away with all of the exemptions, even for the mortgages that had come under it within that year. In other words when the Legislature by general law talks about exemptions, the people who come under the law understand that it is merely giving them a gratuity.

The Grand Lodge against New Orleans in 166 United States makes that absolutely certain.

Now, what is the result in the State of New York? Just let us sum it up. Down to 1901, the Legislature knew that any general law, such as the Mortgage Tax Law, or our Secured Debt Tax Law of 1911 could be repealed without really violating any moral obligation, because the people understood that such laws, which granted them gratuities were subject to repeal.

Then came this special provision of the Constitution, there shall be no special exemptions, and then came this opinion of Judge Clarke, that did away with all possibility of having any special exemptions to repeal in the future.

Now, we can trust the Legislature of New York to take care of the moral features of this matter, or, if we make the modification that General Wickersham has suggested, that would take care of it, and that modification should go in.

But the people of the State of New York to-day have a right to have this Convention say to them, this is the thing towards which we have been working, the legislative repeal of special exemptions.

The constitutional amendment of 1901 did away with the possibility of any further special exemption. General exemptions are subject to repeal.

Now this Convention says to you in the Constitution, so that the moral question in the future shall be absolutely taken care of, all laws with regard to exemptions, whether heretofore or hereafter made, shall be subject to repeal under this Proposed Amendment, and it shall not violate any agreement or contract heretofore made under that law.

The point I wish to make is the point that was made with regard to the amendment to the Constitution in respect to the education of the State. We have gone through that history. The Legislature has acted. The people have acted on that amendment in 1901, and we have reached the point where they are ready for a declaration of this kind, where they want to know precisely how this Convention stands, and how the law should stand with regard to it,—it will stand that way anyhow, and let us say so, in express terms, to the people of the State, so that he who picks up the Constitution in the future may know that when he buys that bond, with the exemption thereon, he buys it subject to that fundamental right of the State, that fundamental right to preserve its right of taxation, and I hope that this sentence, with the modification that Delegate Wickersham has suggested, will be retained in this paragraph.

Mr. Wickersham — I merely want to say that I will accept Mr. Austin's Proposed Amendment in lieu of mine. I withdraw my amendment in favor of Mr. Austin.

Mr. C. A. Webber — A little explanation of the reason for inserting this sentence may be a guide for all of us in our disposition of it now. The original idea of the Committee was simply to prevent the extension of exemptions, and our first proposition was to adopt such sentence, providing that we did not favor future exemptions.

Then somebody said that that might indicate that we sanctioned the retention of the present exemptions, and in order to avoid any constitutional sanction, or idea that we even wanted the present exemptions to remain, we adopted this sentence that we are now discussing, yet there seems to be no good reason why that is necessary, and some of us think there was no good reason except for the purpose of making it perfectly clear. If we have no idea of forbidding the Legislature to repeal, why then I don't see any special reason why it should remain now. I do not think that the sentence affects the Secured Debts Law at all,—I mean that sentence.

The Chairman — The question is on the amendment offered by Mr. Austin.

Mr. Deyo — May we have that read?

The Secretary — Page 1, line 6, after the word "law" strike out the following: "Laws granting exemption from taxation, whether heretofore or hereafter enacted, shall be subject to modification or repeal."

The Chairman — The question is on its adoption. All in favor will signify by saying Aye, contrary No. It seems to be carried, and is carried.

The question is now on the section as amended.

Mr. Wickersham — Mr. Chairman, I think in view of the amendments that have been adopted, there should be inserted after the word "exemption", on line 9, the words "from taxation", so as to read: "Hereafter no exemption from taxation shall be granted."

Mr. M. Saxe — That is accepted.

Mr. D. Nicoll — Is it not in the Constitution now that exemptions from taxation shall be granted only by general laws?

Mr. M. Saxe — Yes.

Mr. D. Nicoll — Why do you want to repeal it?

Mr. M. Saxe — We are now putting in the Constitution an article on taxation. If we pass this sentence which we are now considering, then the Committee on Revision should take out of Section 18 of Article III the sentence there prohibiting the Legislature from passing any special or private law exempting property from taxation.

Mr. D. Nicoll — You propose to trust the Committee on Revision with that, because evidently we are simply putting in the Constitution something that is there now?

Mr. M. Saxe — Practically, only we are putting it where it ought to be, in the article on taxation. And I would remind the gentleman from New York that that was not put in the Constitution by the Convention of '94. That only went into the Constitution, I think about 1901, as a result of the gross abuse of the power of exemption, and it was necessary for the Legislature to recommend to the people some special provision.

Mr. D. Nicoll — I am not criticising that. My only point was, why was it necessary at all here when it is already in the Constitution.

Mr. M. Saxe — I want to say that, in addition, that permits exemptions by general law by a majority vote. Now we are going farther and permitting exemptions only by general law, and, in addition, only by a two-thirds affirmative vote of the members of each House.

Mr. Wagner — Mr. Chairman, I just wanted to ask Delegate Saxe another question, whether the proposition which we have just eliminated from that section may not be covered again by the words "contracted away" in line 5 — whether that would prohibit the Legislature from giving any exemptions.

Mr. M. Saxe — No.

Mr. Wagner — Does it not really contract — doesn't it really take away from the State the power of taxation, therefore contracting away the power of taxation so far as the particular subject matter is affected?

Mr. M. Saxe — No, because where you can repeal it, there is no contracting away the power of taxation.

Mr. Wagner — The question was just suggested, what do you mean by contracting away? Perhaps you could give us an explanation of that.

Mr. M. Saxe — I thought I had covered that very fully.

Mr. D. Nicoll — If you will turn to page 998 of the Record, you will find eight or ten different illustrations taken from other constitutions as to what was meant by the power to contract away, but I would like to ask the gentleman whether there are any decisions interpreting any of those constitutional provisions.

Mr. M. Saxe — Oh, yes; there are a number of decisions. While I do not know that I have the brief on that at hand, we considered quite an elaborate brief on that question. Now, there are a number of instances where the power of taxation has been contracted away. Let me give, perhaps, a rather simple one. In days when they desired steam railroad development, a local community would, in order to help out the development, agree to have a railroad concern come in there and make an agreement to exempt them from taxation forever if they would come in. Now, there is an instance of contracting away the power of taxation. They never could reach that property. It was gone forever as far as taxability is concerned. And so there are any number of instances. What we seek to do is to prevent anything of that sort in the future.

Mr. Sheehan — Let us assume that within the legislative year we may issue State bonds after this particular Constitution is ratified, assuming that condition may obtain. We issue fifty million dollars of bonds, and it is provided in the general statute that there may be an exemption,— either in the statute itself, or in the bond — that there may be an exemption from taxation for State purposes on that bond for a period of fifty years, the life of the bond. Is not that contracting away for the period of fifty years the right that you are trying to guard against here? Doesn't that suspend for the period of the bond the right of the State with reference to that particular contract?

Mr. M. Saxe — Well, I know of no instance, Mr. Sheehan, where the courts have held that, but now the courts have approved exemptions where the statute specifically describes the exemption as a contract; as, for instance, a law exempting such bonds from taxation providing that each bond should contain the following endorsement: That "the within bond shall be free from all taxation whatsoever by and under the statutes of this State or any law thereof," would be construed by the Supreme Court of the United States as a contract, and such a bond could not be taxed. Now, that would not be construed as contracting away the power of taxation. That would be exempting that property from taxation by the contract of the bond.

Mr. Sheehan — Will the gentleman allow me to interrupt? Assume for the purpose of the question that you are right, can you deny that it would be for the period of the bond a suspension of the right to tax?

Mr. M. Saxe — Well, I will say very frankly in answer to that that I did not consider it was necessary to use any word other than the words "contracted away," but the reason we did use the words "surrendered, suspended," was because the courts in considering these cases used the words "surrendered" and "suspended" as equivalent to "contracted away." I think Mr. Webber will bear me out in that. He made some examination and I think he found that the courts repeatedly used the words "surrendered" and "suspended" as equivalent to "contracting away," and in view of the fact that the other States used this form of expression, we thought we would use both because of the precedent established.

Mr. Olcott — And I would not trouble you, but to remove my own doubt: There seems to be some repetition between the first and the last part of this section. Is not "exemption" a suspension or contracting of it away?

Mr. M. Saxe — No, because exemption from taxation can be repealed, but where you contract away the power of taxation, you have done something which you cannot recall.

Mr. A. E. Smith — Take lines 5 and 6, which read, "No property shall be exempt from taxation except as expressly provided by law." I would like to ask the gentleman if any property has ever been exempted from taxation except by law?

Mr. M. Saxe — Well, I assume the gentleman is merely asking an academic question. We have practically stricken out those two lines.

Mr. Austin — In view of the reasons which have been given by the Chairman of the Taxation Committee for inserting lines 4 and 5, "The power of taxation shall never be surrendered, suspended or contracted away," I move that those words be stricken from the section. I cannot find that any reason for adopting the same has been advanced, either in the previous argument or today, except as appears on page 998 of the Record, that a similar provision is in some other Constitution. That is not a very good reason, as far as I am concerned. I move to strike the words out.

Mr. C. A. Webber — I would like to hear reasons for the adoption of this provision, and they should be very important reasons, and it is the most important provision that you have in the proposed article on taxation. You ought to understand exactly what it is, what it proposes to do and what its effect is.

Many years ago, away back in the forties, there was a general custom prevailing in all the states of exempting the railroads, the stock roads from taxation in order to encourage the building of

railroads; of exempting the stock of banks in order to encourage the formation of banks; of granting exemptions by contract to institutions of a charitable or beneficial character, for instance, Cooper Union of New York, where the money that was donated by Peter Cooper for the formation of that magnificent trust was donated upon the express proviso that the property of the corporation formed should be exempt from taxation, and the courts have decided that that was a contract, a binding contract, and any such contract as that with Cooper Union is a valid contract and could never be disturbed, and that is so to-day. Legislatures after that granted charter after charter to benevolent institutions of a similar character to the Cooper Union; of hospital characters; of general benevolent characters, such as the Heaney Estate of Brooklyn, the Brooklyn Benevolent Society, they created in their charter an express exemption from taxation, and those charters were accepted with the feeling and the understanding that those charters exempted those institutions from taxation just as the charter of Cooper Union. Now, those things grew to be quite numerous, and affected large bodies of property, not only the immediate property that would be occupied by the institution itself, but the property from which it derived its income — all the property that was devoted to the purposes of the institution. That was so throughout the country.

Along in the fifties, '55 to '60, the question of these being exemptions which could be wiped out, came frequently into the courts, and they went up to the United States courts, on the question as to whether there was not an impairment of the obligation of contract in seeking to revoke these exemptions, and the reports of the Supreme Court at that time are full of cases upon these different propositions of the railroads, of the banks, and of these private charities, and the United States courts have decided uniformly that where there was really the feature of a contract, that contract was irrevocable, and such contracts they held to be irrevocable when the railroads were induced to build their railroads with the declaration that they would be exempt from taxation, and the banks were induced to form banks on a similar inducement, and those charities were advanced on those special terms also.

Therefore the States commenced to limit this, and to seek to curb the Legislature from granting such exemptions and we find, then, coming into the Constitutions of the different States these provisions against surrendering, suspending or contracting away the right of taxation, because, as was pointed out, if the thing went on, these being exemptions in perpetuity, gradually the entire land of the State might be absorbed in this manner, and it was for that reason that these clauses were placed in the various Constitutions.

Now, we did not adopt any such provision in the Constitution

of the State of New York, and we went on granting, year after year, these charters which the people accepted as being equivalent to the charter of Cooper Union. Along about fifteen years ago, the State commenced to think that too much property was exempted in this way, and they looked into the question as to whether these were really perpetual exemptions that could not be revoked, and it was determined, then, that they were not, that the majority of these cases did not meet the test of the Cooper Union case; that while these provisions had been granted in charters exempting these institutions, they had not been granted upon the express understanding that the money for these purposes could not be advanced except because of the exemption, and they at once commenced to tax these. Within the last few years, only a few years ago the latest case, the Court of Appeals has decided finally that in nearly all of these cases the exemptions are revocable exemptions, and that the State did not grant away or contract away its right to tax. Nevertheless the possibility for the State to do so still remains, and it only requires that anyone seeking these exemptions will put his proposition in proper form, will do what was done by Peter Cooper, and make an offer to the State to exempt this institution upon the condition that he advance so much money in the consideration of the property being exempt from taxation. Now, that can be done to-day. That is one of the things that we seek to prevent. We seek also to prevent the possibility of doing what has been done in these other States in the past, granting exemptions to railroads or banks or anything else that might seem to be a public benefit, but exemptions that might be in perpetuity. We seek also to prevent by this sentence — and it is by this sentence and not by any other sentence — to prevent the contracting away, such as is done by the secured debts law. The secured debts law, if it is a contract, is a contract that we are seeking to prevent. If it is not a contract, it is of course revocable at any time, but if it is a contract, we want to have the Legislature prevented from making such contracts, and that is the purpose and the main purpose of introducing this sentence. The sentence as has been pointed out, prevails in perhaps a majority of the Constitutions of the country to-day. It is a well-understood and well-construed sentence. Its purpose is clear, and with that understanding of its purpose, I think that the purpose is sufficiently important and sufficiently serious to have it inserted in our Constitution.

The Chairman — The question is on the adoption of the motion made by Mr. Austin to strike out. All in favor will say Aye, contrary No.

The Chair is in doubt and will ask again.

Mr. Deyo — Mr. Chairman, may I ask to have the amendment offered by Mr. Austin read?

The Secretary — Page 1, line 4, after the words "Section 1," strike out "the power of taxation shall never be surrendered, suspended or contracted away."

Mr. Brackett — Mr. Chairman, may I inquire what has become of the motion of the gentleman from New York, General Wickersham, that sought to preserve the *status quo*?

Mr. Wickersham — That has been disposed of.

Mr. Brackett — Was it adopted?

Mr. Wickersham — I withdrew it in favor of Mr. Austin's amendment. I rise to a point of order. The vote is being taken.

The Chairman — The point is well taken. The question is on the adoption of the motion made by Mr. Austin. The Chair asked for the vote and was unable to determine. All those in favor will say Aye, those opposed No. It seems to be carried and is carried.

Mr. Westwood — Mr. Chairman, I call for a division — a rising vote.

Mr. Wagner — Mr. Chairman, the result having been announced, it is too late to ask for a division.

Mr. Westwood — Well, Mr. Chairman, the Chair will recognize the fact that the announcement was made so quickly — my friend says simultaneously — that it was a physical impossibility to comply with the rule which Senator Wagner suggests, and I am sure he will have no objection to having a division taken.

The Chairman — I think it is the desire of the Committee to ascertain accurately. I may have been mistaken. The question is on the motion of Mr. Austin to strike out.

Mr. Deyo — That is, to strike out?

The Chairman — Yes, just as read by the Clerk. Those in favor will please stand.

You will be seated, gentlemen. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes 49, Noes 56.

The Chairman — The motion is lost.

Mr. Wickersham — Mr. Chairman, I move to amend the first two lines of the section which read, "The power of taxation shall never be surrendered, suspended or contracted away," by substituting for that the following: "The power of taxation shall always remain in the State and shall never be abridged." I confess, Mr. Chairman, that the language "contracted away" rather sticks in my mind as an unsatisfactory provision, in view of the discussion, and the clause which I have suggested in lieu thereof would avoid that objection. "The power of taxation shall always remain in the State and shall never be abridged" is a substitute for the first sentence of the amendment.

Mr. M. Saxe — Mr. Chairman, I would like to raise this question: If the power of taxation shall always remain in the State,

can the power of taxation be delegated? If it shall always remain in the State, can the Legislature delegate the power of taxation to a political division of the State? Let us be careful of our language. We may make it impossible to raise any local taxes under that language.

Mr. C. A. Webber — Let me suggest the inadvisability of any attempt to amend that article on taxation on the spur of the moment. We have been working for several months in committee on this article on taxation. Every word in that article has been weighed and considered and debated.

Mr. Wickersham — Is it not true that several words have been weighed and found wanting in this committee? Three sentences have been stricken out in this very committee.

Mr. C. A. Webber — Three sentences have been stricken out, but not the language. The purpose of the section was good and the language that was used was good, to carry out the purpose. Now the question is whether the language that is suggested on the spur of the moment is good to carry out the intention here. To suggest here on the floor of this Convention words that are absolutely new to the subject of taxation, seems to me very unwise. Why do we depart from words that have received sanction and meaning in the law? They were selected because they had that sanction and had that meaning, because we could point out and it would be understood what the meaning was. Now to come in and suggest new words that have never been construed, that are open to all sorts of construction, that we do not understand, any of us, what they mean — can't be explained here on the spur of the moment just what they do mean — is certainly most unwise. We ought not to attempt to do anything of the kind here. If we want to make amendments of that kind, suggest them and recommit them.

Mr. Cullinan — Mr. Chairman, I desire to offer the following amendment to the substitute of Delegate Wickersham. This Committee has given a great deal of attention to this section and, if possible, its wisdom ought not to be lost. I have, after conferring with several of the delegates in this part of the chamber, prepared something of this order in the line of preserving what the Committee has done. I would offer the following, using the sentence under discussion:

“The power of taxation shall never be surrendered, suspended or contracted away, but an exemption from taxation may be granted by a general law upon the affirmative vote of two-thirds of all the members of each House of the Legislature.”

Mr. A. E. Smith — I would like to ask the gentleman from New York, Mr. Saxe, a question. If the language, “The power

of taxation shall never be surrendered, suspended or contracted away," should be adopted and put into the Constitution, could the Legislature authorize the city of New York to raise funds for local purposes by taxing privileges?

Mr. M. Saxe — There is no question about that, but what special privileges has the gentleman in mind?

Mr. A. E. Smith — Well, for instance, among the different things that were enumerated that might raise additional revenue for the city, it was suggested that the city of New York be permitted to tax the privilege of bill-posting and putting advertising signs on the tops of buildings. Now would this language in the Constitution prevent the Legislature from granting power to the city of New York to tax the privilege of using the tops of buildings for advertising purposes?

Mr. M. Saxe — Certainly not.

Mr. A. E. Smith — Well, why?

Mr. M. Saxe — Well, the gentleman concedes that the Legislature would have the power to pass such a law itself, doesn't he? Could the Legislature pass a law taxing the right to erect signs on buildings?

Mr. A. E. Smith — Yes, but under the language which you have suggested I doubt very much if the Legislature could pass a law imposing that tax for the benefit of a certain community.

Mr. M. Saxe — Oh, no, the Legislature does not pass a law for the benefit of a certain community. It delegates its powers to do that thing to the certain community.

Mr. A. E. Smith — Well, isn't that suspending the State's power of taxation in the interest of that community, so far as that particular thing is concerned?

Mr. M. Saxe — The State can take that away any time it wants to. It can repeal that law if it wants to reach it itself. I am sure I am very glad the gentleman has spoken of that because it gives me the opportunity to show the great evils in New York into which the Legislature of this State has fallen by erroneous methods of taxation. Go back again to your secured debt law. What did they do there? They took away from the local authority, the local assessor, the right to assess secured debts, a right that I believe is a constitutional right. I think it was unconstitutional to take away from the local assessor the right to assess secured debts because that is a part of the personal property which he has a constitutional right to assess.

Mr. Wickersham — Do you think that the Legislature had no power to take from the local authorities the power of assessing mortgages and to impose the mortgage tax in lieu of other taxation on mortgages?

Mr. M. Saxe — That was a different proposition. They went to work there and imposed a recording tax and I contend that was a different thing.

Mr. Wickersham — The question is entirely irrespective of the tax. They provided that, in consideration of that particular form of tax to be paid to the State, the mortgage should not be subject to taxation by the local authorities. Now I ask whether you think that was not within the legislative province?

Mr. M. Saxe — The question is whether the mortgage tax was a tax at all. It was merely a payment for the right to record the mortgage, but now that is neither here nor there. What I want to get at clearly is this: I maintain that in order to take that right away from the local assessor, assuming that he had it, they exempted that property. They used the power of exemption. Now if they can do that with secured debts, and let us say, with mortgages — let me continue — I maintain that the State can do it with respect to everything, and the State by its power of exemption could take away from the localities all property and assess it itself.

Mr. Wickersham — Mr. Chairman, the hour of five has almost arrived when, under the rules, our sessions come to an end. I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — You have heard the motion. All in favor of that motion will signify by saying Aye, contrary minded No. Carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Brenner — Mr. President, the Committee of the Whole reports progress and asks leave to sit again.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 749, Introductory No. 698, by the Committee on Education, reports favorably thereon.

The President — The question is on agreeing to the report of the Committee of the Whole.

Mr. J. G. Saxe — I would like to ask Mr. Wickersham if he would not like to move as an amendment to that report that Mr. Cullinan's amendment be printed in general orders for the information of the delegates?

Mr. Wickersham — The report refers to a different proposition. This is from the Committee on Education.

The President — The question is on agreeing to the report of the Committee of the Whole. All in favor of agreeing to the report will say Aye, contrary No. The Ayes have it and the report

is agreed to, and the proposed amendment goes to third reading by way of the Committee on Revision.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 756, Introductory No. 679, by the Committee on Taxation, reports progress thereon, and asks leave to sit again.

The President — The question is on granting leave to sit again.

Mr. Wickersham — I move that the Proposed Amendments which were offered in Committee of the Whole regarding this measure be printed for the information of the Committee when it resumes its session.

The President — The question is now upon granting leave to sit again, and the motion of Mr. Wickersham can be made separately. All in favor of granting leave to sit again will say Aye, contrary No. The Ayes have it and the leave is granted.

Mr. Wickersham moves that the amendments which were offered in the Committee of the Whole be printed for the information of the Convention. All in favor of that motion will say Aye, contrary No. The motion is agreed to.

Mr. Austin — At the request of the Chairman of the Finance Committee, and in view of the meeting held by that Committee to-day, I ask unanimous consent to move at this time that the Committee of the Whole be discharged from consideration of Introductory No. 705, Printed No. 758, that it be printed as indicated in this amendment and recommitted to the Committee of the Whole. We wish to have the Finance Bill reprinted in time for special order consideration on Thursday.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Wickersham — Mr. President, I move that we adjourn.

The President — It is moved that the Convention do now adjourn. All in favor of the motion will say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until 10 o'clock to-morrow morning.

Whereupon, at 5:04 p. m., the Convention adjourned to meet at 10 a. m. Wednesday, August 4, 1915.

WEDNESDAY, AUGUST 4, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Dr. Rush Rhees.

Dr. Rhees — Let us pray. Oh, God of all power and wisdom and goodness, by whose hand our fathers were led into this good land and were guided in making and securing the liberties of which we are the heirs, we pray that Thy guiding hand will still be upon us and that in the deliberations that we are conducting for the good of our State and for the securing of the liberties of our people, we may be enlightened by Thy spirit and led to conclusions which shall make for honor and liberty and strength and truth, to the glory of Thy Holy Name, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal is approved as printed.

Presentation of memorials and petitions.

The Chair lays before the Convention a communication from the police commissioner of the city of New York, which will be referred to the Committee on Charities.

Communications from the Governor and other State officers.

Notices, motions and resolutions.

The Secretary will call the roll of districts.

The President — The Chair lays before the Convention a communication from the Chamber of Commerce of the City of Geneva, which will be referred to the Committee on Public Utilities.

Reports of standing committees.

Mr. Stimson — I submit the report of the Committee on Finances in respect to the budget.

Mr. Wagner — I ask leave on to-morrow morning to submit a minority report.

The President — Without objection that leave will be granted.

The Committee on State Finances submits a Proposed Amendment to the Constitution as a substitute for numerous amendments referred to that Committee, and also a written report stating the reasons of the Committee's recommendations that the proposed substitute be adopted.

The Secretary will read the Proposed Constitutional Amendment reported by the Committee.

The Secretary —

PROPOSED CONSTITUTIONAL AMENDMENT

To amend the Constitution by inserting a new article in relation to the budget, and to amend Section 21 of Article III of the Constitution.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

To amend the Constitution by adding a new article to read as follows:

ARTICLE —.

Section 1. *On or before the 15th day of November, in the year 1916, and in each year thereafter the head of each department of the State government except the Legislature and judiciary shall submit to the Governor itemized estimates of appropriations to meet the financial needs of such department, classified according to relative importance and in such form and with such explanation as the Governor may require.*

The Governor after public hearing thereon at which he may require the attendance of heads of departments and their subordinates, shall revise such estimates according to his judgment.

Itemized estimates of the financial needs of the Legislature certified by the presiding officer of each house, and of the judiciary certified by the Comptroller, shall be transmitted to the Governor before the 15th day of January next succeeding for inclusion in the budget without revision but with such recommendation as he may think proper.

On or before the first day of February next succeeding, he shall submit to the Legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and reappropriations clearly itemized; it shall show the estimated revenues for the ensuing fiscal year and the estimated surplus of revenues at the end of the current fiscal year, together with the measures of taxation, if any, which the Governor may propose for the increase of the revenues. It shall be accompanied by a statement of the current assets, liabilities, reserves and surplus or deficit of the state; statements of the debts and funds of the state; an estimate of its financial condition as of the beginning and end of the ensuing fiscal year; and a statement of revenues and expenditures for the two fiscal years next preceding said year, in form suitable for comparison. The Governor may, before final action by the Legislature thereon, amend or supplement the budget.

A copy of the budget and of any amendments or additions thereto shall be forthwith transmitted by the Governor to the Comptroller.

The Governor, the heads of such departments and the Comptroller shall have the right, and it shall be their duty, when requested by either House of the Legislature, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearance and inquiries shall be provided by law. The Legislature may not alter an appropriation bill submitted by the Governor except to strike out or reduce items therein; but this provision shall not apply to items for the Legislature or judiciary. Such a bill when passed by both Houses shall be a law immediately without further action by the Governor, except that appropriations for the Legislature and judiciary shall be subject to his approval as provided in Section 9 of Article IV.

Neither House shall consider further appropriations until the appropriation bills proposed by the Governor shall have been finally acted on by both Houses; nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall be subject to the Governor's approval as provided in Section nine of Article four. Nothing herein contained shall be construed to prevent the Governor from recommending that one or more of his proposed bills be passed in advance of the others to supply the immediate needs of Government.

Section twenty-one of Article three of the constitution is hereby amended so as to read as follows:

Appropriation bills. Section 21. No money shall ever be paid out of the treasury of this state or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made *within three months next after the close of the fiscal year for which such appropriation was made*; [within two years next after the passage of such appropriation act;] and every such law making a new appropriation or continuing or reviving an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied and it shall not be sufficient for such law to refer to any other law to fix such sum. *Appropriations made by the Legislature in the year nineteen hundred and sixteen shall be made for a period ending June thirtieth, nineteen hundred and seventeen, and thereafter the fiscal year of the State shall end on June thirtieth of each year unless otherwise provided by law.*

The President — Second reading.

The Secretary — To amend the Constitution by inserting a new article relating to the budget and to amend Section 1 of Article III of the Constitution.

The President — The Secretary will lay before the Convention the report accompanying the Proposed Amendment.

Mr. Wickersham — I move that the report be considered as read and printed in the Record.

The President — Is there any objection to that disposition of the report? The Chair hears no objection and it is so ordered.

The Secretary — Mr. Stimson, on behalf of the Committee on State Finances, Revenues and Expenditures, presented the following memoranda.

THE RAPIDLY INCREASING GROWTH OF GOVERNMENT EXPENDITURE

Your Committee has pointed out in its recent report to the Convention on Article VII of the Constitution the very rapid increase in debt of the State of New York and of its political subdivisions; it has pointed out that the State debt, whether measured in the aggregate or per capita, now greatly exceeds the debt of every other State in the nation and that the same is true of the debt of its political subdivisions, taken either in the aggregate or per capita. It now invites attention to the similar rapid increase in the cost of the government of the State. The expenditures out of the general fund of the State, exclusive of interest on the canal and highway debts and of the free school fund, have increased from \$7,163,831.18 in 1885, to \$42,408,488.24 in 1914. This represents an increase in general running expenses of nearly 600 per cent. in thirty years. This increase of expenditures, as shown by five-year periods, is as follows:

1885	\$7,163,831.18
1890	7,200,056.54
1895	12,066,646.97
1900	17,696,398.85
1905	24,511,946.95
1910	34,791,576.01
1914	42,408,488.24

During this period the population of the State has increased only 82 per cent. During this period the assessed valuation of real and personal property liable to taxation in the State has increased from \$3,224,682,343 to \$12,070,345,088, a percentage of only 274. Furthermore, a large portion of this increase in assessed valuation does not represent a real increase in property but is due either to new methods of taxation, like the special franchise tax first levied in 1899, or to increases in percentages of assessment, as, for example, in New York city, where in 1903 the rate of assessment was raised from between 67 and 75 per cent. to approximately 90 per cent.

Until recently the State has not felt the strain of this disproportionate rise in expenditures because it has been able to meet them by its revenues from indirect taxation. But it has now become apparent that the limit of indirect taxation has been practically reached. Indirect revenues fell off \$1,900,000 from 1913 to 1914 and the Governor in his message of January 7, 1914, stated that in his opinion the maximum indirect revenue had been practically reached.

According to the report of the Census Bureau the governmental cost per capita of the State government of New York rose from \$2.47 in 1895 to \$5.41 in 1914, an increase of 235 per cent., where the population of the State had gained only 53 per cent. during nineteen years. During that period assessed valuations in the State rose only 171 per cent., including both of the fictitious increases above mentioned. In other words, the State government costs each resident more than double the amount it cost in 1895.

This rapidly increasing per capita cost of government is a phenomenon which is not peculiar to New York State but is occurring likewise in other State governments, and also in the Federal government although to a less extent than in New York. The cost of the Federal government in thirty years prior to 1908 has increased nearly 400 per cent., while the increase in the population was less than 84 per cent. The growth in ordinary expenditures for carrying on that government, excluding interest on the public debt but including payments for pensions and many public works, rose from \$135,000,000 in 1878 to \$637,000,000 in 1908. (See Statement of Hon. George B. Cortelyou, former Secretary of Treasury, in *North American Review* for April, 1909.)

Hon. James A. Tawney, the last Republican chairman of the Committee on Appropriations of the House of Representatives, made the following statement in 1909: "In no period, except in time of war, have the expenditures of our national government increased so rapidly, both in the aggregate and per capita, as these expenditures have increased during the past eight years. This fact may well cause our people not only to pause and consider the cause of this very large increase in the annual expenditures of the government, but also to consider the necessity of checking this growing tendency toward excess."

The Hon. John J. Fitzgerald, the present Democratic chairman of the same Committee in the House of Representatives, in a hearing before your Committee on May 26, 1915, pointed out the same rapid increase in the expenses of government and said: "We have reached a point in our Federal expenditures, now aggregating a hundred million dollars a year, when it is necessary either

to very greatly increase the taxes levied by the Federal government or else to curtail present activities or stop expanding the activities of the government. We have reached about the limit of revenue under our present systems and if the government is to continue to expand and increase its activities there must necessarily be very greatly increased revenues." (Document No. 15, p. 4.)

The same accelerating rate of the cost of government is to be found throughout the States, although the figures show that New York is the worst offender. The average cost of government of all of the States of the Union rose 105.9 per cent. from 1903 to 1913, according to the Census Bureau figures. During that time the population of the State rose only 20 per cent. Of these the cost of government of the States of the Middle Atlantic division rose 160.3 per cent. and of New York State rose 200.2 per cent.

To sum up, we find that throughout the country the amount of money spent on government, both State and national, is increasing much more rapidly than the population and much more rapidly than the sources of supply, in the shape of property subject to taxation.

Undoubtedly this increase of cost is largely due to the fact that government has greatly extended its activities. There is no reason to suppose, however, that any real or permanent check can be put upon this increase. It arises out of the constantly increasing complexity of modern life and modern business and the increasing density of our population. So long as these factors continue, greater and greater demands will be made upon the activities of government. They represent an economic pressure which is constantly growing.

Out of these facts arises the corresponding and increasing need for sound financial methods in conducting the business of government. With States, as with individuals, the habit of expenditure breeds extravagance, and it cannot be assumed that the completion of particular projects will counteract the desire to spend. America is only at the threshold of her problem. If, under our present methods, the cost of government has already reached the limit of reasonable taxation, it only makes it clear that we should examine our methods in order to prevent unnecessary waste.

It has been frequently pointed out that the United States is substantially the only civilized country where, in both its national and State governments, a scientific budget system is unknown. No financial plan is presented to our Legislature in public each year by the men who are responsible for the conduct of government. No considered estimates of the future, no material whatever for comparison with the past, is presented by our executives

to the Legislature in such a way that that body and the public can understand them and hold the spenders of our public money responsible; instead, our appropriation and revenue bills are made up in the comparative secrecy of legislative committees and rushed through in the hurry of the final days of a legislative session.

The effect of this looseness of method has long been apparent in the results of our expenditures. For many years we have been spending more than half as much upon our army as Germany has spent upon hers, and a still greater percentage of what France has spent upon hers, but where their expenditure has produced forces which are now astonishing the world by their size and efficiency, our expenditures from the lack of the proper working machinery between the Executive and Congress which a budget system would supply has largely been wasted upon the unnecessary army posts in the districts of influential Congressmen. The same is true in respect to our navy, where money necessary for dreadnoughts is spent on useless navy yards in favored localities. Our river and harbor appropriation bills have obtained the name "Pork Barrel Bills" because their contents are looked upon more from the standpoint of the political requirements of legislators than of national routes of transportation. The same lack of responsible aim has marked our appropriations for public buildings.

Nearly thirty years ago this fundamental defect in our national system was pointed out by Mr. James Bryce in that leading study of our institutions, *The American Commonwealth*, where he said, quoting an American publicist: "A thoughtful American publicist remarks: 'So long as the debit side of the national account is managed by one set of men, and the credit side by another set, both sets working separately and in secret without public responsibility, and without intervention on the part of the executive official who is nominally responsible; so long as these sets, being composed largely of new men every two years, give no attention to business except when Congress is in session and thus spend in preparing plans the whole time which ought to be spent in public discussion of plans already matured, so that an immense budget is rushed through without discussion in a week or ten days — just so long the finances will go from bad to worse no matter by what name you call the party in power. No other nation on earth attempts such a thing or could attempt it without soon coming to grief, our salvation thus far consisting in an enormous income, with practically no drain for military expenditure.' * * * Under the system of Congressional finance here described America wastes millions annually. But here wealth is so great, here revenue so elastic, that she is not sensible of the

loss. She has the glorious privilege of youth, the privilege of committing errors without suffering from their consequences." (The American Commonwealth, Vol. I, pp. 177-179.)

These words were uttered over a quarter of a century ago. The figures of our taxable resources alluded to above make it evident that this period of youthful privilege is now over and that we in America can no longer claim the same exemption from the conditions governing other communities.

In view of the foregoing facts your Committee believes that the only alternative to a grave danger of general discontent arising out of the constantly increasing burden of taxation is a thorough and drastic revision of our financial methods.

Your Committee has made a careful study of the methods of financial legislation of this State. It has had before it gentlemen representing all phases of legislative and executive activity of the State, including men who had held or still occupied the positions of Governor, Comptroller, Speaker and chairman of the principal Committees of both Houses of the Legislature. It has had before it men thoroughly familiar with those activities in the Federal government, including ex-President Taft and Mr. Fitzgerald, chairman of the Committee on Appropriations of the House of Representatives. It has examined into the budget methods of the cities of this State and budget methods in vogue in Great Britain, Canada and other countries.

As a result, it presents its conclusions as to the chief defects in the present methods of financial legislation in the State of New York and finds that the following are the chief causes of waste and extravagance in those methods:

DEFECTS OF PRESENT SYSTEM IN NEW YORK STATE

I

LACK OF RESPONSIBLE REVISION OF THE DEPARTMENTAL ESTIMATES

Under the Laws of 1910, Chapter 149, the annual estimates of the various departments, bureaus and commissions of the State are to be submitted by them to the Comptroller on November 15th of every year for transmission to the Legislature. The Comptroller has no power to revise or reduce these estimates when submitted or even to compel their untimely submission. His only function is to assemble them and transmit them to the Legislature. No other executive officer has any power to revise or co-ordinate them.

As a result, they are made up by the various bureau chiefs who consider only their own desires without regard to the revenues

or other needs of government and as a result the aggregate of these estimates mounts into a sum which bears no responsible relation either to any consistent plan for expenditures for the coming year or to any plan for raising revenue. In size they are limited only by the enthusiasm of each bureau chief for the activities of his own bureau.

The evil is very much aggravated by the fact that there is no adequate organization of these bureaus and commissions into a limited number of departments. The estimates of the various officers, instead of being sent to the Comptroller through a departmental chief who can revise and reduce the estimates of his subordinates, are transmitted directly to the Comptroller. Almost the only exception to this lack of system is in the somewhat limited oversight exercised by the Fiscal Supervisor of Charities.

As a result, when these estimates reach the Legislature they are regularly so high that very little attention is paid to them. They are necessarily treated as mere requests for money desired rather than as responsible estimates of the amounts required. The Legislature is therefore itself forced to undertake the work of proposing and formulating for the first time a program of the annual expenditures.

II

THE LEGISLATURE IS NOT THE PROPER BODY TO PREPARE A FINANCIAL PLAN OF EXPENDITURE

Your Committee has reached the conclusion that the Legislature is not the proper branch of the government to initiate such a program of annual expenditures and that in attempting to do so it labors under the following insuperable disadvantages:

(a) Its proper work is legislative; it has no administrative control or authority over the bureaus and departments through which the moneys of the State are expended and necessarily cannot have such authority. It is therefore without the consistent regular information as to operating difficulties, problems, methods and costs which would naturally come to the superior officer of those bureaus. Instead it must act upon such information as it can acquire through hearings held by committees, meeting only occasionally.

The Legislature cannot exercise executive supervision to compel a given bureau to try to produce the desired result with less money by adopting a more efficient method. It cannot exercise executive authority to reconcile conflicts between overlapping or encroaching bureaus so as to prevent duplication of effort and expense. In a word, it cannot produce the constant necessary team play and co-operation which is essential to economy.

(b) The Legislature is under the further disadvantage that its members, instead of being responsible solely to the State as a

whole, are each responsible to and dependent upon a single district of the State. A financial program made up in the first instance by the Legislature necessarily tends to represent a compromise or bargain between different districts rather than the viewpoint of the State as a whole. The treatment of the multitude of separate items necessarily tends to that process of give and take which has become so common in America as to be stigmatized by the terms "log rolling" and "pork barrel."

(c) In the third place, the very fact that the program is made up in the Legislature at once tends to shield it from real criticism by the Legislature. No body can adequately criticise its own work. This applies both to criticism by the majority and minority parties. A real budget program presented by the executive to the Legislature should receive, and in other countries regularly does receive, criticisms and suggestions, even from its own party members. The viewpoint of the man who grants money is different from the viewpoint of the man who asks for it, even when they both belong to the same party. Under our methods the man who makes up the program is the same man who afterward leads the debate on the majority side. No criticism whatever from him can be expected. It is his own program. On the other hand, so far as the minority is concerned, they also have participated in the work of the committees and, to a certain extent, their views have also been accommodated. And even in those cases where they differ with the program, inadequate opportunity for the discussion of the issue thus presented has been afforded under our methods, as will be shown under the following subdivision. As a result, the budget debates of the Legislature, after the appropriation bill has been made up, have become formal and perfunctory.

(d) Finally, the fact that no program for consideration and discussion takes form until the Legislature itself makes up the appropriation bill tends to destroy publicity and opportunity for debate. Instead of there being an entire financial program laid before the Legislature by a responsible executive early in the session with which every citizen in the State can familiarize himself, comparing its items with the corresponding expenditures of preceding years, and as to which, therefore, he can put himself in a position to understand the issues and debates, no citizen now in the ordinary course learns anything of any program until the Ways and Means Committee reports the appropriation bill so late in the session that there is no opportunity for effective suggestion or criticism. The bill has then received the approval of the various elements and leaders in committee and the subsequent discussions mean little. This evil has been accentuated by the

misuse of the emergency message, under which, during the past twenty-one years, every appropriation bill except one has been hurried through in the final hours of the session without the necessity even of being printed and lying on the desks of members for three days. We think it is safe to say that under ordinary conditions not only is the public ignorant of the items of appropriation bills until they are enacted into law, but the same ignorance applies to the members of the Legislature outside of the one or two men who control the conduct of the bill. It is therefore almost impossible to create a real issue, a real debate on the subject of economy, and without the publicity of such an issue and such debate your Committee does not believe that real economy can be attained.

III

NO COMPLETE FINANCIAL PROGRAM OR BUDGET AT PRESENT EXISTS

The third general criticism which your Committee makes of our present system is that nowhere, either in the Legislature or outside, is there now ever formulated or made public a really complete financial plan or budget. Such a budget, as is universally understood in communities or institutions which practice budget-making, should contain the following essential elements:

(1) A responsible estimate of the proposed expenditures for the coming fiscal year.

(2) Financial statements of the current resources and liabilities of the State, including its debts and various funds, and including, for the purpose of comparison, a statement of its current expenditures and revenues in past years.

(3) A proposition of the new measures of taxation, if any, which will be necessary to meet the proposed expenditures of the coming year.

To see how far short we fall now of having any such information available it is only necessary to recall the issue which arose last winter between the present State administration and its predecessor over the question as to whether a direct tax of \$18,000,000 was needed. When it is recalled how difficult it was for the ordinary citizen to determine the rights of a controversy over the necessity of a tax amounting to nearly 30 per cent. of the total revenues of the State, one can form some conception of the confusion of our present methods and the desirability of a complete annual budget scientifically prepared.

IV

THE NECESSITY OF RESTRICTIONS AGAINST ADDITIONS TO THE
BUDGET ON THE FLOOR AFTER IT IS PREPARED

The fourth general criticism which your Committee makes is that there is no restriction now imposed against additions at the behest of individual members being made to the budget after it is formulated and proposed by its framers. Your Committee believes that the absence of such restriction would be fatal to any budget system. The spirit of mutual accommodation is necessarily so strong between members of all legislative bodies that without protection against its effect the best laid program of financial expenditure is liable to destruction on the floor of the Houses. Your Committee learned of an instance last winter where an appropriation, the real though not ostensible purpose of which was to help a member of the Legislature to re-election in his own district, after it had been rejected by the Finance Committee of the Senate, was forced through on the floor of that body by the united vote of both parties, the chairman of the Finance Committee and the leader of the minority alone voting against it.

Restrictions against such increases or additions exist in the Legislatures of all other English-speaking countries. They originated in the oldest standing rule of order of the House of Commons, dated July 11, 1713, which forbids that body to raise the amount of items presented in the budget. Similar restrictions exist in the Constitution of the Dominion of Canada as they did in the Constitution of the Southern Confederacy. They are a familiar and most successful feature of the charters of all the largest cities of this State and your Committee believes they embody a principle which is indispensable to successful budget practice. This principle has been stated by one writer as follows: "Upon the creation of just such a situation as that the efficiency of representative government depends. Its essential principle is to fix the representatives so that *they* cannot put their hands into the till; then they will keep a good watch over those who *do* handle the money. Congressmen will take a very different view of pork barrels from that now held when they can no longer help themselves to the pork." (Ford on the Cost of Our National Government, p. 115.)

V.

THE PRESENT SYSTEM REVERSES THE REAL RELATION OF THE
EXECUTIVE TO THE LEGISLATURE AND SURRENDERS IMPORTANT
POWERS TO THE EXECUTIVE

Your Committee further finds that the system of permitting the Governor to veto items in appropriation bills prepared by the

Legislature has resulted in transferring to the Governor, to a large extent, the historic function of the Legislature of holding the purse strings of the State. The present system presents a singular reversal of the proper relation which should maintain between the Executive and the Legislature. Instead of the Executive coming to the Legislature with a request for funds, which it is the province of the Legislature to pass upon and either grant or refuse, our system has gradually resulted in the Legislature presenting to the Executive appropriation bills which he is expected to reduce. Instead of the man who is to spend the money presenting to the body which is to grant the money his request for their final decision, the latter body, in substance, draw their check in blank and present it to the Executive for him to determine how much of it he cares to use. Your Committee finds the present system has resulted in the Legislature, under pressure of local and individual interests, passing many appropriations at larger figures than they believed to be proper in reliance upon the hope that the Governor would afterward prune them down to the proper dimensions. In other words, our attempt to accomplish by the use of the Executive veto what elsewhere has been accomplished by the legislative rule against additions to the budget mentioned under subdivision IV above, has very nearly resulted in an abandonment to the Executive of the priceless legislative function of holding the purse. Our Legislatures, instead of placing upon themselves during their own deliberations, a self-denying ordinance, like the rule of the House of Commons above mentioned, have left it to the Governor to make the necessary corrections afterward.

Not only is our system an abandonment of essential legislative power, but it is open to other grave dangers to which a proper system would not be open. Instead of presenting his budget at the beginning of the session, the Governor uses his veto power, after the session is over, and can make it an instrument of punishment or reward. Instead of presenting a public plan of expenditures and revenue which can be subjected to the fullest publicity and the most searching scrutiny, and where an attempt to recommend expenditures for other motives than the interest of the State as a whole could be discovered and discussed, the Governor exercises his veto power in a series of disconnected acts under circumstances which make such discovery less easy.

VI

THE PRESENT SYSTEM PREVENTS ANY REAL DEFENSE OR CRITICISM OF THE BUDGET IN PUBLIC

Finally, as a result of our present method, the members of our Legislature are deprived of adequate opportunity to ask questions in public concerning the estimates of the men who know most about them.

In those communities where the budget is presented by the Executive to the Legislature, it follows as a natural matter of course that the men who have prepared the estimates and the financial program present themselves personally before the Legislature to defend and to be examined about them. The Legislature thus has an opportunity to learn at first hand the propriety of the requests which are made and to cross-examine the men who make them under such circumstances that the public can get a clear conception of the strength and the weakness of any proposed budget. Such a method of public criticism can accomplish results which are quite impossible to our present system of committee work which, at best, is conducted without effective publicity.

RECOMMENDATIONS

Your Committee has prepared and presents herewith a proposed amendment which embodies its recommendations, made for the purpose of meeting the foregoing defects in our present system and of providing the machinery for a budget system in the State. Your Committee is glad to report that on many of its conclusions and recommendations its members were unanimous and that all such recommendations, after having received careful discussion, are supported by a large majority of its members.

First — Estimates Must Be First Revised and Classified Within the Respective Departments

Your Committee were unanimous in their belief that a system should be introduced which would compel a greater sense of responsibility on the part of department heads in submitting their estimates of requirements. Such a reform will be greatly facilitated in case the recommendations of the Committee on Governor and Other State Officers are adopted under which it is proposed that the various bureaus, commissions and offices of the State shall be grouped into a limited number of departments at the head of each of which shall be an executive chief. The amendment proposed by your Committee makes it the duty of such department head to classify the estimates for his department according to his judgment of their relative importance. He is thus made responsible that they be presented in such a way that any subsequent pruning can be done with intelligence. This duty of classification will necessarily tend to make the head of each department better acquainted with the needs of his various bureaus and subordinates and will tend, in the opinion of your Committee, to increase the responsibility which such department head will feel as to his estimates.

Second — The Estimates Should Then Be Revised and Co-ordinated by a Central Executive Authority

Your Committee were unanimous in believing that these departmental estimates should be revised by a central executive authority before transmission to the Legislature. This is the nub of a real budget system. It means that that executive authority must be responsible for preparing and completing a consistent plan for the proposed expenditures of the State under which those proposed expenditures will be brought into proper relation to the expected revenues. It means that some central authority on the executive side of the government must take the responsibility of cutting down the estimates which are too high, of deciding between those which are conflicting, and of recommending an aggregate which will bear a proper relation to the revenues; it means the introduction of a system of planning and foresight where none now exists.

Third — This Central Authority of Revision Should be the Governor

The very great majority of your Committee are of the opinion that this ultimate responsibility of revising the estimates and preparing the budget must rest with the Governor.

(a) Upon him rests the constitutional duty of seeing that the laws are enforced. The departments whose estimates comprise by far the greater portion of the budget are the instruments through which he performs that constitutional duty. His relation to them is such as to make it his duty to constantly and naturally receive information as to their functions and puts him in a position to exercise that supervision over their co-operation and team work which is absolutely necessary for economy. He is the man who can insist that a given department shall do its work with less money or decide between several departments which is to be given the preference in respect to available revenues. He is the man who, under the present system, though less effectively, makes a similar decision when he prunes the appropriation bills with his veto.

(b) Secondly, as the head of the State he is the one who can best explain and defend a given fiscal policy to the people of the State and he is the one who, above all others, is interested in upholding before the people of the State a policy of economy and who should be held responsible to them for the success or failure of such a policy.

Fourth — Objections to a Board of Revision

No board composed of several co-ordinate members could perform these functions with equal efficiency. The necessary authority over subordinates would be absent and the sense of responsibility would be diminished.

(a) The State has already made such an experiment with a board of estimate created under Chapter 281 of the Laws of 1913 and the defects above mentioned caused its complete failure. The board there created was composed of the Governor, Lieutenant-Governor, President and chairman of the Finance Committee of the Senate, Speaker and chairman of the Ways and Means Committee of Assembly, Comptroller, Attorney-General and Commissioner of Efficiency and Economy. It was thus composed of four legislative and five executive members, and violated the principle above referred to, which requires that the function of proposing a budget should be separated from the function of disposing of it and that the former should belong to the Executive and the latter to the Legislature. Although the board under the statute was ostensibly given ample power for the preparation and revision of estimates, it at once became deadlocked and was unable to agree. It failed wholly to formulate definite proposals and never succeeded in proposing any budget to the Legislature. It was shortly abolished by statute. Its fate amply demonstrated the error of confusing instead of defining responsibility.

(b) It has been suggested to the Committee that the Comptroller and the Attorney-General should share with the Governor this responsibility in the matter of revising the estimates. Your Committee believes that the Comptroller should be consulted in respect to the budget but should not be committed to it in advance. He is the auditing officer of the State. His services should be at the disposal of the Legislature in criticising and disposing of the budget. If the Comptroller were made a member of a budget board he would be committed to that budget and his subsequent criticism would be foreclosed and useless.

The amendment which your Committee submits, therefore, provides that the Comptroller shall receive a copy of the budget and that he shall have an opportunity thereafter to present his views in regard to it before the Legislature. This we believe to be the true function which he should play.

As to the Attorney-General, your Committee wholly fails to see what services he could render in the revision of the estimates. He is not a financial officer; he is not the superior of the departments who render the estimates, and to impose upon him such a duty would simply be an interference with his functions as chief law officer of the State and would impose a useless burden upon him.

Fifth — Public Hearings Upon the Budget

The amendment submitted by your Committee provides that the Governor shall give public hearings upon the estimates, at which he may require the attendance of department heads and their subordinates. The purpose of your Committee is to make the function of revision of the estimates as public as possible. This will

minimize the danger of unfairness of allotment between the different activities of the State and will give an opportunity for public information and criticism.

Sixth — Estimates of Legislature and Judiciary

The Governor's power of revision should, in the opinion of your Committee, not be extended over the estimates of the legislative and judicial branches of the State.

Under your Committee's amendment such estimates are prepared by those branches and transmitted to the Governor. They necessarily form an integral part of the budget or plan of expenditures for the ensuing year, but the Governor is given no power to revise or reduce them and may simply present them to the Legislature with such recommendations in respect to them as he may be advised. He, however, retains his present power of veto over these estimates.

Seventh — Submission of Budget to Legislature

The budget, when completed by the Governor, must be submitted to the Legislature on or before the 1st of February. It must contain all of the elements above specified.

Your Committee believes that the essentials of a complete budget should be so carefully prescribed in the Constitution that there will be no danger of the system failing from lack of an adequate standard to which future administrations must conform. The experience of some cities of the State justifies this precaution. We believe that the elements enumerated in the Proposed Amendment contain such requisites.

Your Committee believes that it is essential that the budget should be presented as early as possible in the session and, after careful investigation, believes that the 1st of February will give the Governor time for its preparation and yet allow it to reach the Legislature in time for full discussion.

Eighth — Appearance of Governor, Comptroller and Heads of Departments Before the Legislature

Under the Proposed Amendment these officers are to have the right and be subject to the duty, when requested by either House, to appear and be heard and to answer inquiries relative to the budget. In order to provide for a proper, permanent and dignified system for such appearance, it is made the duty of the Legislature to provide for the necessary procedure by law. This right and duty of appearance follows as a necessary corollary of the budget system. Where such a budget is prepared by one branch of the

government and submitted to another, it necessarily carries with it the right to be heard and the duty to submit to interrogation with reference to the measures which are thus proposed. It follows the natural method by which men in all the affairs of life dispose of such an issue, namely, by meeting face to face in discussion and interrogation. It also insures that the plans of the Governor, embodied in the budget, will receive essential publicity and criticism on the part of the State.

If the budget has been unfair to any department or bureau, it provides a means by which that fact can be made public. If there should be any issue between the Governor and the Legislature as to proper economy or adequate expenditure, it insures that this issue will be discussed in a deliberative forum, under parliamentary rules, instead of as now, merely upon the stump and in the press. It affords an invaluable opportunity by which the people's representatives, without the expense, excitement and necessary hostility of special investigations into departments, may keep themselves informed as to the financial working of every branch of the State government. For these reasons "Question Day" in the House of Commons has been called the center of gravity of the British Constitution. (See Cambridge's Modern History, Vol. VI, pp. 810-811.)

Ninth — Relation of the Governor's Budget to Other Financial Legislation

Your Committee has very carefully considered this difficult question. On the one hand, it is essential to the success of the whole system that the Governor's budget, when presented, be given a fair trial and that it be considered on its merits without the easy temptation to the Legislature to throw it aside and begin over again a new budget of its own; on the other hand, your Committee believe that, particularly when a new system is thus being introduced, the Legislature should retain not only adequate power to correct executive abuses, but the right to initiate financial legislation by methods which will not disrupt the budget.

The amendment which your Committee presents, therefore, provides that the Legislature, in acting upon the budget, may reduce or strike out but not raise the items therein. It thereby applies to the proposed bill the old self-denying ordinance of parliamentary procedure above mentioned. To leave in the Legislature the right to raise those items would, as your Committee believes, leave the door open to an entire abandonment of the system and an immediate return to present methods and would also tend to destroy all incentive on the part of the Governor to prepare the budget carefully in advance and present it with a sense of responsibility. But

to meet the objection that the Governor might misuse his power and either starve objects which the Legislature deems worthy or trade with individuals or localities, the power of initiation of financial legislation is left with the Legislature subject to but two restrictions:

(1) It must not be exercised until after the budget is disposed of by both Houses; and

(2) Such appropriations must be made by separate bills, each for a single work or object.

We believe that this will adequately protect the budget system and yet keep it free from executive abuse. A Governor sincerely devoted to economy will have the opportunity to present a complete financial plan, drawn in the sole interest of the State at large. He will have all the aid which public presentation and discussion can give him in presenting that plan to the Legislature. The Legislature must approach it in the spirit of a fair critic and not of a rival constructor; and yet, if individual abuses have crept into the budget, they can be remedied. The Legislature is left free to inaugurate new State activities, provided it does them in the manner prescribed. By postponing such additional legislation until after the budget has been acted on both the State and its representatives in the Legislature will have opportunity to fully know all the revenue available, if any, beyond the regular departmental expenses.

We believe that this proposal will enlist in the working out of this problem all of the probabilities for success which can come through publicity and a sense of responsibility on both the executive and legislative branches of the government. It also follows closely all of the lines of precedent which successful budgets in other communities and institutions have followed in the past.

Tenth — Fiscal Year. Expiration of Appropriations

Your Committee further believes that the beginning of the State's fiscal year should be moved forward to July 1st, with a view to bringing the period to be financed closer to the time during which the estimates and budget for that period must be made. This change would put the termination of the year to be planned for, three months nearer to the time when the plans are made than it is under the present system and by so much would facilitate more accurate forecast. Finally, we believe that the expiration of appropriations from time to time, two years from the date of their enactment, causes great and unnecessary confusion. It is therefore proposed that hereafter all appropriations shall expire at the end of a fiscal year.

BRIEF SUMMARY OF OBJECTIONS AND ANSWERS

1. The fear that the proposed budget system would deprive the Legislature of power or dignity is, we believe, a complete misconception. On the contrary, the Legislature would be restricted only to the extent of being protected from disrupting influences while considering the budget. It would retain power of initiation thereafter; and in addition it would be restored to its lost position of dignified and effective control over appropriations.

Under present methods, financial legislation has been in danger of degenerating into a scramble for local favors and privilege; the proposed system makes it possible for the Legislature to consider from a Statewide viewpoint the broader financial interests of the State.

Under present methods the Legislature has been gradually surrendering its most vital power in financial legislation to the Executive veto.

The proposed system will restore that power and make it final. 2. Nor is there the slightest force to the claim that the proposed system would give undue power to the Governor. It would add not one iota to the power that he now possesses through the veto of items in the appropriation bills. Whereas now that power is subject to no review and thus may be used as an instrument of reward or punishment after the legislative session is over, the proposed system would deprive him of his veto as to budget items and would thus compel him to use his influence in advance, in the open, under the fire of legislative discussion and the scrutiny of the entire State. It would thus be the Legislature which would have the final word.

3. Of even less weight, in the opinion of your Committee, are the objections sometimes urged that the Governor, and especially a new Governor, would not have time to prepare a budget. It is believed that the burden would be lighter than under the present system under which the Governor must prune the appropriations within thirty days after the session, under all the added pressure of reviewing some 500 other bills and without any of the assistance of the previous classification by department heads for which the Proposed Amendment provides.

Doubtless the burden would be heaviest on a new executive. But it is the familiar practice of each new administration in our first and second class cities to rely, to a large extent, upon its predecessor for its first budget. There is no break in government and the system is successful, as we believe it would be in the State government. The lengthening of the Governor's term from two to four years would greatly aid the efficient and intelligent preparation of budgets.

Undoubtedly in budget-making, as in virtually all other executive work, much of the work of investigation and comparison would fall to subordinates. But in view of the growing importance of the issue of economy and the probability of a direct tax for many years to come, no Governor could afford to shirk or delegate the ultimate decision. On the contrary, he would have a new and vital incentive to study the machinery of the State. He could not risk the sure discovery of ignorance or neglect. He would be under a new compulsion to devise systematic and rational methods of saving, for on him would squarely fall, as it should, the responsibility for extravagance, and to him would be given as never before due credit for wise economy.

4. We have already enumerated some of the reasons which require and justify the presence of the heads of executive departments and the government on the floor of the Houses of the Legislature in order to defend and answer inquiries about the budget. Critics of the budget system have assailed such a proceeding as novel and un-American. To answer such criticism it is only sufficient to remind the Convention that this procedure was practiced by the first national administration of this country under President Washington and his cabinet officers; that it has been introduced by an American Congress into the governments now in force in Porto Rico and the Philippine Islands; that it is a system in practice before the local Legislatures of many of the largest cities of this State; and that it was strongly advocated by Justice Story in his Commentaries on the Constitution, and that it has since been earnestly recommended by a long line of American statesmen, including Presidents Taft and Wilson, and Senators George H. Pendleton, James G. Blaine, John J. Ingalls, W. B. Allison, O. H. Platt, Elihu Root and James W. Wadsworth, Jr. A practice recommended by such precedents and such authorities cannot be justly criticized as un-American.

In concluding, your Committee fully recognizes the difficulty of the subject and the responsibility involved in suggesting changes, no matter how well supported by authority and experience, into any system rooted in long-accustomed usage. But it has been fortified in its conclusions by recent investigations in other States, notably Minnesota, Iowa and Illinois, which resulted in recommendations essentially similar to those here made. It believes that the system which it advocates would make possible in this State a much needed adjustment of expenditures to revenues, and that it would bring into the finances of New York simple and common sense principles long familiar and admittedly indispensable in the affairs of every day American business.

The President — Is there any special motion to be made in

relation to the disposition of this report? Referred to the Committee of the Whole.

Mr. Stimson — Mr. President, under the rule, I assume that it will be printed as a document. Am I right in assuming that?

Mr. Wickersham — Correct.

Mr. Clinton — I desire to present the report of the Committee on Canals.

The Secretary — The Committee on Canals begs leave to submit the following Proposed Amendment to Section 8 of Article VII of the Constitution, and recommends its passage, with this statement of the reasons for the proposal to amend.

The approaching completion of the Barge canal improvement has made it necessary to amend Section 8 of Article VII by defining the canals to which the prohibition against sale, lease and other disposal in the present Constitution applies. The retention of the language now in the Constitution might possibly lead to a misconstruction, it at least would leave the intent open to misinterpretation. In addition to this, questions have arisen heretofore in the courts as to what properties used in connection with the canals were to be considered parts of them so as to be within the prohibition against sale, etc. The Committee has therefore added to the language of the Constitution clauses which are intended to include within the prohibition, canal terminals, the Erie, the Oswego, the Champlain, and the Cayuga and Seneca canal, as the same will be improved and become part of the Barge canal system —

Mr. Wickersham — Mr. President, I move that the further reading of the report be dispensed with; that the report be considered as read and printed in the Record.

The President — Without objection that course will be followed.

REPORT OF COMMITTEE ON CANALS

BY MR. CLINTON, CHAIRMAN OF COMMITTEE ON CANALS

The Committee on Canals begs leave to submit the annexed Proposed Amendment to Section 8 of Article VII of the Constitution and recommend its passage, with this statement of the reasons for the proposal to amend.

The approaching completion of the Barge canal improvement has made it necessary to amend Section 8 of Article VII by defining the canals to which the prohibition against sale, lease and other disposal in the present Constitution applies. The retention of the language now in the Constitution might possibly lead to a misconstruction, it at least would leave the intent open to misinterpretation. In addition to this, questions have arisen heretofore

in the courts, as to what properties used in connection with the canals were to be considered parts of them so as to be within the prohibition against sale, etc. The Committee has therefore added to the language of the Constitution clauses which are intended to include within the prohibition canal terminals of the Erie, the Oswego, the Champlain and the Cayuga and Seneca canal, as the same will be improved and become part of the Barge canal system, at the same time preserving the application of the prohibition to the Black River canal. Language has been used which saves as a portion of the Barge canal system those parts of the existing canals which have been preserved as a part of that system by existing statutes, which are either amendments to the laws under which the Barge canals are being constructed or separate statutes. The parts so preserved are, in some instances, needed auxiliaries as terminals or to connect with the Barge canals, manufacturing localities which would otherwise be cut off from direct connection with the improved canals. These are not many and do not impose upon the State the maintenance of any considerable portion of the old canals.

In addition to the parts preserved by existing statutes the Committee, after careful consideration, has concluded that the existing inland Erie canal from Tonawanda creek to connection with the Black Rock harbor, and canal slips 1 and 2 in the city of Buffalo should be made a part of the Barge canal system, even though not enlarged to Barge canal capacity at present. Slips 1 and 2 in the city of Buffalo are needed for terminal purposes and should not be abandoned; and the inland Erie canal from Tonawanda creek to Black Rock harbor, your Committee is decidedly of the opinion, should be saved as a part of that system in order to enable westbound boats with partial cargoes or without cargoes to reach Buffalo from Tonawanda creek without proceeding up Niagara river against the heavy current.

Under existing statutes the present Erie canal is preserved from Rome to Mohawk, passing through the city of Utica. This was done because the Barge canal passes so far to the north of the manufacturing districts in that city that the expense to manufacturers of shipping by the Barge canal would be greatly increased if connection by the existing Erie canal, both east and west, were not retained. However, the saving of this part of the Erie canal in the city of Utica prevents the improvement of the grade of the city streets at and in the vicinity of bridges crossing the canal. To relieve the municipal conditions and at the same time to save for the manufacturing industries connection with the Barge canal through the existing Erie canal, your Committee has deemed it wise to insert language in the Proposed Amendment which will

permit the present Erie canal between Schuyler and Third streets in Utica to be disposed of on condition that a flow of sufficient water from Schuyler to Third street be maintained, as may be done by means of pipes or other conduits. This Proposed Amendment protects the manufacturing industries and will permit the lowering of the bridges and the street grades.

In view of the approaching completion of the Barge canal system, efforts have been made, and will continue to be made, to secure portions of the canals which may be abandoned for particular municipal and private purposes. In the opinion of your Committee this practice should be stopped as the result must be, if it be allowed to continue, that abandonment will not be properly safeguarded and the State will not receive proper compensation. Your Committee has therefore proposed an amendment to the effect that abandonment, sale or other disposition of canals or canal property which shall cease to be a portion of the canal system of the State shall be pursuant to general laws only, which shall secure to the State the fair value of the property.

Question having arisen under a recent decision of the Court of Appeals as to what the title of the State to property appropriated to canal purposes is, your Committee has deemed it wise to propose an amendment that announces that title to be in fee.

Maintenance of the supply of water for the canals, to protect commerce and navigation, and control over the flow of water in the prisms and channels, is paramount to the use of canal waters for any other purpose. Nevertheless, in certain localities and under certain circumstances (dependent of the supply of water) there is at times more water than is needed for navigation, the use of which for power purposes can be permitted, subject to such control as will prevent creation of currents which will be impediments to navigation. This has been recognized heretofore and leases have been granted for the use of surplus waters which in their operation have been exceedingly detrimental and which have not compensated the State fairly for supplying the waters to the lease holders. Your Committee has therefore deemed it necessary, for the protection of the State, to propose an amendment permitting the leasing of surplus waters provided that that use thereof shall not in any way injure, impair, interfere with or endanger navigation or the construction, use, maintenance, operation, the safety of the canals or of other property of the State. Your Committee has deemed it wise that no lease shall be granted in perpetuity and that there shall be preserved to the State the right, whenever in the opinion of those having charge of the management and operation of the canals, the needs of navigation required to terminate or suspend the same and to regulate and alter the amount of water to be used thereunder.

AMENDMENT TO SECTION 8 OF ARTICLE 7 OF THE CONSTITUTION

Section eight of Article seven of the Constitution is hereby amended to read as follows:

Section 8. The legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, [or] the Black River canal, *or canal terminals heretofore or hereafter constructed, nor shall any easement in or incumbrance on such canals or terminals be created;* but they shall remain the property of the state and under its management forever. [The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.] *The canals to which such prohibition applies shall be those now known as the Erie, the Oswego, the Champlain, the Cayuga and Seneca, and the Black River canals until the barge canal improvement under chapter one hundred and forty-seven of the laws of one thousand nine hundred and three, as amended, and chapter three hundred and ninety-one of the laws of one thousand nine hundred and nine, as amended, shall have been completed, when such prohibition shall apply only to the said terminals, the Black River canal, the said improved canals, the portions of existing canals heretofore reserved for canal purposes by statute, the existing inland Erie canal from Tonawanda creek to connection with the Black Rock harbor, and canal slips numbers one and two in the city of Buffalo; provided, however, that in the city of Utica that portion of the existing Erie canal between Schuyler and Third streets may be sold or otherwise disposed of on condition that a flow of sufficient water from Schuyler to Third street to feed that portion of the canal east of Third street be maintained. The abandonment, sale or other disposition of canals or canal property which shall cease to be a portion of the canal system of this state as above defined shall be under and pursuant to general laws only, and such laws shall secure to the state the fair value of the property which may be abandoned and sold.*

Property which has been or which may hereafter be appropriated for canal purposes shall be deemed to be held by the state in fee.

The legislature may, by general laws but not by special laws, provide for the leasing of surplus waters of any of the State canals or canal feeders. No such lease nor the use of the waters under

any such lease, shall in any way injure, impair, interfere with, or endanger navigation or the construction, use, maintenance, operation, or safety of the canals or of other property of the state. Each lease shall be for a stated period not exceeding thirty years, and shall reserve to the state the right whenever in the opinion of those having charge of the management and operation of the canals the needs of navigation require it, to terminate or suspend the same and to regulate or alter the amount of water to be used thereunder, without incurring liability upon the part of the state.

The President — The Secretary will read the Proposed Amendment to the Constitution reported by the Committee.

The Secretary — Proposed Amendment to the Constitution. To amend Section 8 of Article VII of the Constitution.

Second reading — To amend Section 8 of Article VII of the Constitution.

The President — Any special motion to be made regarding the disposition of this Proposed Amendment to the Constitution? Referred to the Committee of the Whole.

Any further reports of standing committees?

Reports of select committees.

Third reading.

Unfinished business of general orders.

Special orders.

General orders.

The Secretary will call the calendar.

No. 729, General Order No. 16, by Mr. J. G. Saxe.

Mr. J. G. Saxe — I have not moved this amendment earlier, and I do not move it to-day, for the reason that I believe there are two matters which should have precedence over it and should be disposed of before we take up the controversial question involved in this amendment, which relates to holding State Conventions. I think we should first dispose of Judge O'Brien's Proposed Amendment to the Bill of Rights and Mr. Barnes' Proposed Amendment. But I wish to give notice to all the members that this amendment will be moved at the proper time.

The President — Three numbers on the calendar having been moved, the Convention will now go into Committee of the Whole for consideration of the calendar.

Will Mr. F. L. Young take the Chair.

The Chairman — The Convention is now in Committee of the Whole.

The Clerk will read.

Mr. M. Saxe — I move that we continue the discussion on General Order No. 28, Printed No. 756, upon which we were

busy yesterday afternoon when the hour of adjournment was reached.

The Chairman — The motion is that we proceed with the discussion on the tax bill. Those in favor of that motion will say Aye, opposed No. Carried.

Mr. M. Saxe — Mr. Chairman, we are now proceeding with the consideration of the proposed article on taxation, section by section. At the time of adjournment yesterday we had under consideration the first section, and particularly the first sentence of the first section: "The power of taxation shall never be surrendered, suspended or contracted away."

The Chairman — I think the speaker is entitled to the attention of the House on this important bill.

Mr. M. Saxe — During that discussion an important suggestion was made with reference to the language of the first sentence, so far as the securities of the State and the political divisions of the State are concerned. Now, while in my own mind I am satisfied that there is a distinction which is recognized by the courts between contracting away the power of taxation generally and the agreement that the State or a political division of the State may make through the Legislature of the State not to tax its own securities, which is agreeing not to exercise the power of taxation, still, perhaps, in order that there may be no question about it, and if we are agreed that what we want to do here is to prohibit by our constitutional mandate the contracting away of the power of taxation, it might be wise to make it perfectly clear that such a provision does not apply to the securities of the State or a political division of the State. However, in order to make it a little clearer, I should like to read from Judson on Taxation with respect to the taxation by a State or municipality of its own security. Mr. Judson on page 74, quoting from a Virginia case, says: "The power of the State to impose a tax upon her own obligations is a subject upon which there has been a difference of opinion among jurists and statesmen. On the one hand, it has been contended that such a tax is in conflict with and contrary to the obligation assumed; that the obligation to pay a certain sum is inconsistent with a right, at the same time, to retain a portion of it in the shape of a tax, and that to impose such a tax is, therefore, to violate a promise of the government." It goes on to say,— citing Hamilton on Public Credit, third volume, pages 514 to 518,— and adds that, on the other hand, it is urged that the bonds of every State are property in the hands of its creditors and as such they should bear their due proportion of the public burden.

However, in order to eliminate all possible doubt, I would make this suggestion that we amend the first sentence, in effect,

as follows: "The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the State or a political division thereof." Now I have no pride of opinion in that particular language. I merely make that as a suggestion by way of amendment to the broad language of the sentence as it stands at present, so that all doubt may be removed as to the contract which the State may make for itself or for a political division, excepting its own securities, or the securities of a political division, from taxation.

Mr. Wagner — The effect of your amendment now makes it very clear, does it not, that the State will have no power, or the Legislature would have no power, to enact legislation which would give an exemption forever upon any subject-matter on which there is, say, one initial tax paid. You will prevent forever the passage of legislation giving exemptions of taxation except upon State securities or securities issued by subdivisions of the State. Is not that the effect of your proposal?

Mr. M. Saxe — Let me answer that this way, Mr. Chairman. That is exemption by contract.

Mr. Wagner — By contract. In other words the Secured Debt Law, if passed after this provision were adopted, would really not be an exemption and those paying the tax upon the theory that they would forever be exempt would have a mistaken notion of their rights, and the Legislature in the following year, after promising exemption by law, could repeal the exemption. Is not that the effect of it?

Mr. M. Saxe — Yes, provided that you agree with me that such legislation as the Secured Debt Law is not a legal contract.

Mr. Wagner — Well, then, by adopting this provision you prohibit the Legislature ever making such a contract, because this becomes an implied provision of that contract.

Mr. M. Saxe — That is right.

Mr. Wagner — Really an express provision of the contract.

Mr. Sheehan — Mr. Chairman. In other words, Mr. Saxe, do I rightly understand your concession to be that if this amendment now proposed by you were adopted, the Legislature could not pass another secured debt exemption law? That is a fact, is it not?

Mr. M. Saxe — That is correct, as to making such an act a legislative contract.

The Chairman — Will Mr. Saxe kindly send his amendment to the desk, and will all amendments proposed be handed up to the desk?

Mr. A. E. Smith — When the session adjourned last evening, I was on my feet about to ask the gentleman from New York a question. The beginning of Section 1 reads: "The power of taxation shall never be surrendered, suspended or contracted

away." I take it that that means the power of the State to tax. I am not particular about having a reply by mail, Mr. Chairman.

Mr. M. Saxe — Mr. Chairman, at the next Constitutional Convention the gentleman may have a reply by "female," but at the present moment I am trying to write out this amendment for the desk, and if he will bear with me for a moment, I will answer him directly.

Now, Mr. Chairman, if the genial gentleman will be kind enough to repeat his question I will endeavor to answer it.

Mr. A. E. Smith — I say, "The power of taxation shall never be surrendered, suspended or contracted away." I take it that that means the power of taxation by the State.

Mr. M. Saxe — What further has the gentleman in mind? Of course it is the power in the State, but if he has in mind the power exercised by the localities, he must bear in mind that it is the power of the State which they exercise through a delegation of it.

Mr. A. E. Smith — Well, would this in the Constitution prohibit the Legislature from delegating to the city of New York the right to tax anything that is not now taxed?

Mr. M. Saxe — Mr. Chairman, certainly not.

Mr. Wickersham — Mr. Chairman, will the gentleman yield? I understand that this would prohibit the city of New York from entering into a contract to the effect that it would not in the future impose a tax upon any kind of property. Take for example the subway. Suppose an aerial railway should in the development of the future be the approved means of rapid transit? The city of New York under such a provision as is now suggested could not make a contract furthering the construction of any such means of transport with the agreement that it should never be subject to taxation.

Mr. M. Saxe — My answer to that is this: That if you take the narrow construction that has been considered here with respect to the power of taxation, that might be so; but there is a distinction between public property and private property.

Mr. Wickersham — I think the delegate does not get my distinction. Exemptions are strictly construed —

Mr. M. Saxe — That is so.

Mr. Wickersham — and any doubt in the question as to the extent of exemption is resolved against the person claiming the exemption and goes to the public.

Mr. M. Saxe — Yes, that is the usual rule.

Mr. Wickersham — So that I understand what the delegate means is to provide in the future that neither the State nor one of its subordinate agents shall bargain away and agree to exempt any particular property from taxation in the future, save only

in the case of obligation of the State or by one of its political subdivisions. Is not that the effect of the proposed provision?

Mr. M. Saxe — That is quite right, but what I had in mind was this, that the Legislature still could exempt property for a term of years and particularly public property so that there would be no question about that.

Mr. Wickersham — Does the delegate mean to say that under this language property could be exempted for any term of years except obligations of securities of the State or political subdivisions thereof?

Mr. M. Saxe — Not by contract. The exemption would be subject to repeal.

Mr. Byrne — Mr. Wickersham has suggested that we might have an aerial railroad in New York. There is no suggestion in your Committee to tax the air in the city of New York, is there?

Mr. M. Saxe — That was not raised, to my knowledge.

Mr. Wagner — Why not, why not?

Mr. A. E. Smith — I am unable to read this in such a way as to make the example that Mr. Wickersham just gave fit what I have in mind. That would be surrendering or suspending the tax. But what we are dealing with here is the power. Now the aerial railroad case has to do with the tax, but not with the power to tax. If you read it, it says "the power." You leave out the words "the tax" and read it for a minute, and it says the power shall never be surrendered. Now, how can the Legislature say to the city of New York, "You can hereafter include as realty the right and the privilege to have a signboard in the air?" It is a surrender of the power. Let us leave the word "taxation" out altogether and let us talk about the power.

Mr. M. Saxe — Mr. Chairman, I fail to see the point of Mr. Smith's question or statement.

Mr. D. Nicoll — What existing evil is aimed at by this amendment?

Mr. M. Saxe — What is the question?

Mr. D. Nicoll — What existing evil is aimed at by this amendment?

Mr. M. Saxe — Well, I cannot name a clearer one than the Secured Debt Law, if considered a contract.

Mr. Wagner — We have been talking about the Secured Debt Law for three days, and we have talked about it as an exemption. As a matter of fact, under a strict construction, would you call the privileges given under the Secured Debt Law as exemptions? Isn't it the difference between paying a yearly tax upon a certain subject-matter which is taxed, and paying one definite tax? Isn't it really a commutation and not an exemption, and this exemption

clause we have been discussing in connection with the Secured Debt Law does really not affect it.

Mr. M. Saxe — Now, Mr. Chairman, let me try to make myself clear again, if I can. What I am directly aiming at is this vice on the part of the Legislature trying to reach property which is local, and locally assessable, and taking it away from the local assessors by exempting it from local taxation and commuting the tax by putting a low State rate on it. Don't you see that you are gradually drying up the source of revenue so far as the localities are concerned? Now, the State has the power to do it, and if it wants to do it, all right, but don't do it by the process of exemption. That is the vice in all of these things; gradually you are exempting all property from local taxation, and where are you going to come out?

Mr. A. E. Smith — I would like to ask the gentleman from New York if the secured debt tax was a surrender of the power of taxation?

Mr. M. Saxe — Not in my opinion, because there was no contract there.

Mr. A. E. Smith — Then, I would like to ask him if it was a suspension of the power to tax?

Mr. M. Saxe — Not in my opinion, for the same reason.

Mr. A. E. Smith — I would like to ask him if by its provisions it contracted away the power to tax?

Mr. M. Saxe — Well, I contend that it was not a contract —

Mr. A. E. Smith — No, that is not the question.

Mr. M. Saxe — Therefore, it did not.

Mr. A. E. Smith — It did not. Then, how does this cure the secured debt tax?

Mr. M. Saxe — Don't you see that it will be ineffectual to pass that sort of legislation in the future? It is not going to cure what has gone over the dam. I am looking for the future. I want to stop the drying up of the source of local taxation.

Mr. A. E. Smith — Mr. Chairman, the gentleman just admitted that the Secured Debt Tax Law did not surrender, did not suspend and did not contract away the power of taxation. So that therefore, if this was adopted and in the Constitution, an identical bill could pass next year.

Mr. M. Saxe — Well, now, perhaps I may have misunderstood the point that the gentleman was driving at. I have said that I did not consider the Secured Debt Tax Law a contract, and therefore it could be repealed. The question has been raised that, at least, it is a moral obligation and it should not be repealed. Under this language, while in itself I frankly admit this, that there may be a question as to whether it will absolutely cure the

evil of such legislation as the Secured Debt Law, it will tend to stop such legislation.

Mr. A. E. Smith — That is what I would like to have the delegate explain to me, how it will stop it.

Mr. M. Saxe — Well, because the invitation won't amount to anything. Unless people know they are going to be secure in their exemptions, they won't take advantage of them, and, therefore, it will be ineffectual to pass such legislation. It will not be used as a vehicle of exempting property.

Mr. Wagner — Isn't what you are after here this: That the exemption, if it be an exemption, in the Secured Debt Tax Law, may be a contract that the State entered into; I mean that is a mooted question, and has not been definitely determined, that the Legislature might have contracted away the right. Now, what you are proposing to do is that never again can they contract away the power of taxation. So that, if this provision is adopted an effective Secured Debt Law could not be passed in the future.

Mr. M. Saxe — Quite right, Mr. Chairman.

Mr. Wickersham — Wouldn't it also prevent the Legislature from in the future granting exemptions to charitable institutions, cemeteries, places used for the purposes of education or what not, from taxation?

Mr. M. Saxe — It would prohibit the granting of contractual exemptions.

Mr. Wickersham — Well, in other words, it would prohibit not merely granting contractual exemptions; it would prohibit the Legislature from suspending or surrendering the power to tax a particular piece of property, whether in consideration of the resulting benefits to the public, in consideration of the assumption of a portion of the public burdens by the object of the exemption, or in consideration of some actual payment in money or in land. Let me cite an instance. The late Mr. Harriman granted a large piece of land in Orange county, I believe, to the State of New York, on consideration that his adjoining land should be exempt from taxation for a long time. Now, I take it that this provision would prevent the State in the future from entering into any such agreement.

Mr. M. Saxe — Absolutely. That is the intention of it. It is just to prevent those kinds of contracts on the part of the Legislature. And that is a very happy illustration which Mr. Wickersham has given.

I now move the question on this sentence as amended.

Mr. Ostrander — While this matter of contracting away the power to tax and this question of the Secured Debt Law is under consideration, I want to offer an amendment which I think will be for the benefit of myself and some others, by adding,

"But any farmer may register his farm with the Comptroller, pay a tax of one-half of one per cent. of the fair market value thereof, and said farm shall be forever thereafter free from taxation thereon."

The Chairman — The question is on the amendment offered by Mr. Saxe.

Mr. Sanders — I would like to ask Mr. Saxe whether he intends, by the amendment he proposed this morning to the first sentence of the article, the tax article, to provide that the State might make a contract to exempt its own bonds after they are issued and in the hands of investors, or whether he intended only to allow the contract to be made at the time of the original issue of the bond?

Mr. M. Saxe — Mr. Chairman, I think under this language the State could make this contract at any time. I think if the contract is made at the time the bonds are issued it would come under the old line of decisions, that it is entirely within the power of the State to agree not to exercise its power of taxation, which it does when it issues tax-free securities, which often occurs, and that is the agreement it makes. Now, under this provision, there is no question. I think that the Legislature can pass at any time an agreement exempting the securities of the State or a political division thereof.

Mr. Sanders — Mr. Chairman, that is as I understood the language. I would like to ask the further question, What is the reason for permitting it after the bonds are issued and in the hands of investors, any more than there is reason in permitting it in the case of other securities?

Mr. M. Saxe — That would be entirely within the discretion of the Legislature.

Mr. Wickersham — Would it not be of great value to the State, or might it not be, to have the power in connection with the extension of the time of the payment of some of its obligations to exempt them from future taxation, and might it not have a very distinct effect upon the rate of interest at which an outstanding obligation might be extended?

Mr. M. Saxe — Decidedly, Mr. Chairman.

Mr. Byrne — If I understood you correctly in answer to Senator Wagner's question, you said this clause would prevent the passage of a law like the Secured Debt Law; is that true?

Mr. M. Saxe — If the proposers of the law had in mind making a contract, it would prevent legislation contractual in effect.

Mr. Byrne — The mere fact that the State does not exercise its power and at some time does do something of this character, that does not take the power away, does it?

Mr. M. Saxe — I do not think I understand the gentleman's question.

Mr. Byrne — Simply because the State at some time passes some law relieving from taxation, or granting a commutation, whatever you choose to call it, does not take the power away from the State?

Mr. M. Saxe — Let me try to make it clear again. The gentleman must distinguish between a legislative act which is a mere governmental policy and a legislative act which amounts to a contract. If the Legislature grants an exemption which is contractual in its nature, exempting property from taxation in perpetuity, it has contracted away the power of taxation with respect to that property; that is the point.

Mr. Byrne — But if, as you have answered to Delegate Smith, these words would not have prevented the passage of such a law; what is there in them now that would prevent it in the future?

Mr. M. Saxe — The difficulty with Mr. Smith's question is this, that it is not settled as a matter of law whether the Secured Debt Law which has been passed is a contract or not. It is contended that it is not a contract.

Mr. C. A. Webber — The question has been asked as to whether there is any present necessity for the passage of such an amendment as this. I think that it has already been pointed out very clearly that there is an urgent present necessity. I referred yesterday to the numerous cases that had been passed upon only within the last year by our own Court of Appeals in reference to contract or claimed contracts of exemption; exemptions which, if they had been in the form of a contract, as they were supposed to be, would have been irrevocable. Now the power exists to-day to make such irrevocable exemptions unless we prevent them. The desire for such irrevocable exemptions exists to-day as much as it did in the years gone by when these exemptions were granted when they were supposed to be irrevocable exemptions. There are people to-day establishing various foundations for beneficent or other purposes who are only too anxious to obtain for those foundations exemptions, and they can go to the Legislature to-day and if the Legislature will make a contract with them they can obtain perpetual exemptions. That is an existing possibility to-day. The Court of Appeals within the last two years has declared that this is possible; that if they make the form of contract there is no revoking it at any time. Now we want to prevent that. That is an existing possibility, and a grave possibility. We want also to prevent any possible question upon this Secured Debts Law. There is grave question, grave question by everybody in fact that holds a secured debt that has been exempted. There is the claim that he has perpetual exemption.

Now we want to remove any possible misconception as to that. If it is a contract we want to say that no such contract shall ever be entered into in the future. If it is not a contract we don't affect it at all; the Legislature has the power to go along and do as it has been doing, but it must be understood that the people have the right to have it understood and clearly stated that these exemptions, if they are contracts, cannot be made. If they are not contracts they are subject to revocation at any time. Now in regard to the question that was asked by General Wickersham as to whether by any possibility this might affect the general charitable exemptions I want to read from the opinion of the United States Supreme Court in one of the old cases on this very point: "The idea that the State by exempting from taxation certain property parts with a portion of its sovereignty is of modern growth and so is the argument that if a State may part with this in one instance it may in every other, so as to divest itself of the sovereign power of taxation. * * * The assumption that a State in exempting certain property from taxation relinquishes a part of its sovereign power is unfounded. The taxing power may select its objects of taxation; and this is generally regulated by the amount necessary to answer the purposes of the State. Now the exemption of property from taxation is a question of policy and not of power. * * * But it is said that the State cannot barter away any part of its sovereignty. No one ever contended that it could. A State granting privileges to a bank with the view of affording a sound currency or of advancing any policy connected with the public interest exercises its sovereignty for a public purpose of which it is the exclusive judge. This act, so far from parting with any of its sovereignty, is an exercise of it, and no one can deny this power to the Legislature. Has it not the right to select the objects of taxation, and determine the amount? To deny either of these is to take away State sovereignty. It must be admitted that the State has the sovereign power to do this and it would have the sovereign power to impair or annul the contract so made had not the Constitution of the United States inhibited the exercise of such a power. The vague and undefined and indefinable notion that every exemption from taxation or a specific tax which withdraws certain objects from the General Tax Law affects the sovereignty of the State is indefensible." Now it is in order to meet that very situation that because it is a contract —

Mr. Wickersham — Will you give me the citation you have been reading?

Mr. C. A. Webber — The Piqua Branch of the State Bank of Ohio, Plaintiff in error, v. Jacob Knoop, Treasurer of Miami

County, 16 Howard, 369. There were a number of opinions written in that case.

Mr. Wickersham — May I ask the delegate, is it not the case that since that decision and the earlier decisions the decisions of the Supreme Court of the United States have gone very much further than indicated there and have recognized the binding character of the contract of exemption to the extent embraced in the exemption in derogation of the taxing power and is operating against that power as to say it is a contracting away of the State power to tax?

Mr. C. A. Webber — That is the very thing they have done here. They have said that the State having made the contract the United States Constitution would prevent the State from revoking that contract.

Mr. Wickersham — Therefore to that extent the State has contracted away its power.

Mr. C. A. Webber — It has contracted away its power because of the United States Constitution. That is the point. But it has the right to grant exemptions provided it is not a contract. Now, the general exemption of charitable purposes, churches, etc., is not in the nature of a contract. It can be revoked to-morrow, and that is what you have provided in your language of to-day, the very language we propose in this article, that it may revoke at any time. In making a contract you cannot revoke.

The Chairman — The Chair is informed that several amendments on this question are pending. The rule requires that they be taken up in the order in which they were offered.

Mr. M. Saxe — Mr. Chairman, we are not dealing with the second section. The understanding is we are treating this article section by section.

The Chairman — Yes, that is right.

Mr. M. Saxe — And we are confining ourselves to the first section.

The Secretary — By Mr. Wickersham: Lines 4 and 5, strike out the sentence beginning with the word "The" and ending with the word "away" and insert the following: "The power of taxation shall always remain in the State and shall never be abridged."

The Chairman — The question is on the motion offered by Mr. Wickersham.

Mr. Wickersham — I withdraw that amendment, Mr. Chairman.

The Chairman — The amendment is withdrawn. The Clerk will read.

The Secretary — By Mr. Cullinan: Page 1, line 5, after the word "away" strike out period [.] and add the following: "but

an exemption from taxation may be granted by a general law upon the affirmative vote of two-thirds of all the members of each House of the Legislature."

Mr. M. Saxe — Mr. Chairman, that does not change the effect of the remaining sentence whatsoever, and in view of the amendment which I suggested this morning for improving the first sentence, I think it would be unwise to adopt that amendment by Mr. Cullinan at this time.

The Chairman — Is the Committee ready to vote on the proposed amendment?

Mr. Wickersham — I notice Mr. Cullinan is not here. Possibly that had better be passed until he comes in. I believe he is in some Committee room.

The Chairman — The Clerk calls my attention to a provision of the rules which says that these amendments must be disposed of in their order.

Mr. Wickersham — Very good.

Mr. M. Saxe — Mr. Chairman, if I may be permitted to make an explanation, the amendment appears at the top of page 1129 of the Record of yesterday, and one can see at a glance that all it does is to connect the first sentence as it stood originally with the last sentence of the first section of the article, making those two sentences into one and eliminating the two sentences which were rejected yesterday. Now, in view of the fact that I have offered an amendment for the improvement of the first sentence, I think it would be unwise to adopt Mr. Cullinan's amendment at this time. It might be better to consider it after we have passed on the amendment to the first sentence.

The Chairman — The question is upon the amendment offered by Mr. Cullinan. Those in favor of that amendment will say Aye. Those who are opposed will say No. The amendment is lost.

The Clerk will read the next proposed amendment.

The Secretary — By Mr. Wickersham, lines 5 and 6, strike out sentence beginning with "No" and ending with word "law."

Mr. Wickersham — Those next two amendments were accepted yesterday; when made they were accepted by the mover of the measure and incorporated in the matter under consideration now.

Mr. M. Saxe — That is my understanding. The second and third sentences were stricken out yesterday.

The Chairman — I suppose it raises the question whether or not Mr. Saxe is in a position to amend his own bill by consent in that way.

Mr. Wickersham — Perhaps a motion that those two amendments be incorporated would be better. I make that motion, that

is, that the sentence beginning with the word "No" and running down to line 8, "modification or repeal" be stricken out.

The Chairman — For the information of the House, the Clerk will read the two amendments proposed by Mr. Wickersham. Read the first one.

The Secretary — Lines 5 and 6, strike out sentence beginning with word "No," and ending with word "law."

The Chairman — Those in favor of that motion will please say Aye, opposed No. The motion is carried. The next amendment.

The Secretary — By Mr. Austin, lines 6, 7 and 8, strike out sentence beginning with word "Laws" and ending with word "repeal."

Mr. Austin — Mr. Chairman, that was favorably acted upon yesterday.

The Chairman — Only by consent, that is all.

Mr. Austin — It was stricken out by a vote of this House yesterday.

The Chairman — The Clerk says there was no vote. Those in favor of the proposed amendment will say Aye. Those opposed will say No. Carried.

The Secretary — By Mr. Wickersham, page 1, line 9, after word "exemption" insert the words "from taxation."

Mr. M. Saxe — That was accepted yesterday.

The Chairman — Those who are in favor of this proposed amendment will say Aye, opposed No. The motion is carried. The next proposed amendment is the amendment offered by Mr. Saxe this morning. The Clerk will read.

The Secretary — By Mr. M. Saxe, amend by adding at line 5, after the word "way", the following: "except as to the securities of the State or a political division thereof."

The Chairman — The motion is before the House. Those in favor of it will say Aye, opposed No. Carried.

Mr. Wickersham — Mr. Chairman, the period after the word "way" in line 5 should be stricken out in order to bring that in, and I so move.

Mr. M. Saxe — Certainly. I thought that was understood.

The Chairman — The motion is on the elimination of the period in line 5. Those in favor will say Aye, opposed No. The motion is carried. Now the motion, as I understand it, is on the amended section. The Clerk will read the section as amended.

The Secretary — Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the State or a political division thereof. * * *

Mr. Marshall — We have, for the sake of uniformity, used the

words "civil division" instead of "political division" throughout the Constitution and I move that the word "civil" be substituted for the word "political."

The Chairman — Mr. Marshall moves that the word "civil" be substituted in place of the word "political" in the amended section.

Mr. M. Saxe — One moment. May not a question arise there as to school districts, Mr. Marshall?

Mr. Marshall — That would be a civil division.

Mr. C. A. Webber — What particular wording was that?

Mr. Marshall — "Civil" instead of "political."

Mr. C. A. Webber — I want to call the attention of the Convention to the fact that a tax district in our present Tax Law is defined as a political subdivision of the State for purposes of taxation. That was the reason for the selection of that word "political."

Mr. Marshall — Among the first amendments that were adopted in Committee of the Whole, there was one with regard to extra compensation. After much discussion, we finally decided that the word "civil" should be used instead of the word "political" subdivision. The Constitution uses the words "civil division" in several of the sections, and our hope has been that we might have uniformity of expression in the Constitution and not have the words "civil division" used in one instance and "political division" in another, thus creating a doubt where none should exist. The words "civil division" relate to any division of the State, of the territory of the State, whether it shall be a county, a town, a city, a ward, a tax district or a school district. That is a civil division.

Mr. M. Saxe — Mr. Chairman, with that explanation in the Record, I think it is entirely immaterial and it is advisable in the interest of uniformity to substitute the word "civil" for "political."

Mr. C. A. Webber — I agree thoroughly after that explanation.

The Chairman — The question is on the amendment offered by Mr. Marshall. Those in favor will say Aye, opposed No. The motion is carried. Now the Clerk will read the amended section again.

The Secretary — "Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the State or a civil division thereof. Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all the members elected to each House.

Mr. Austin — I wish to say one word about this section as it now stands. The discussion which has taken place this morning and yesterday afternoon has convinced me that there is just one thing left in it, which, if enacted into law, will not involve us in unknown difficulties and will be productive of some good result, and that is the provision that no exemption shall be granted except by two-thirds vote of the Legislature. That provision can be very well added to the present provision, which prohibits the enactment of any private bill granting exemption, and which is not repealed by this proposed article; it therefore seems to me that we ought to reject this whole section, leaving it to the Committee on Taxation to bring in an amendment to the other section of the Constitution which will only provide that no exemption shall be granted except upon the two-thirds vote of the Legislature, and I therefore move that the whole section be stricken out.

Mr. M. Saxe — Let me say in answer to the observations by Mr. Austin that the Committee on Taxation studied this proposition for some two months. It had a very thorough discussion of every sentence in this proposed article. It had before it some of the best exponents versed in the subject of taxation. It has submitted its conclusions to some of the best authorities, men like Professor Seligman of Columbia, men like Professor Bullock of Harvard, men like Professor Young of Cornell, the leaders of economic thought in this country, and they approved of the conclusions of the Committee, in the main. Now, I want to say, in direct answer to Mr. Austin, as to the fear that we may be embarking upon some unknown sea, no progress would ever be made if we were going to stop because of such a fear. I think it has been made very clear just what is sought to be accomplished by this proposed article. This proposed article, the first section of it, certainly, with which we are dealing now, is unquestionably in the public interest and ought to be adopted by this Convention.

Mr. C. A. Webber — I have listened through all this discussion for any real reason why this first sentence, which is really the object of attack, should be stricken out, except for the reason that it seemed to interfere with certain exemptions that we did not want to interfere with. Now we have cleared away the atmosphere as to that, and it has not been pointed out that there is a single thing that is covered by this sentence that anybody can reasonably say ought not to be covered by it. I do not think that there is anybody in this Convention that wants the Legislature to have the power to exempt forever the stock of a railroad in order to encourage the railroad; the stock of a bank, in order to encourage the bank; the properties of any charitable endowment, in order to encourage the charity, or the passage of any Secured Debt Law.

Now what is the objection to it? What specific reason is there that it ought not to be passed? There are reasons why it should be passed, but I have heard no specific reason why it should not be passed, and I ask for any specific reason why we ought to vote in favor of wiping it out.

The Chairman — It is moved that the amended section, number 1, be stricken from the Proposed Amendment. Those who are in favor of this motion will say Aye. Those who are opposed will say No. The Noes seem to have it. The Noes have it. The question now is upon the amended section as read by the Clerk. Does any delegate wish to have it read again before voting on it? The Clerk will read again.

The Secretary — Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the State or a civil division thereof. Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all the members elected to each House.

Mr. Wickersham — Mr. Chairman, before we take a vote on that, I would like to call attention to just one word there that I did not notice before, and I do it for the purpose of making a motion in the future rather than at present. "Hereafter no exemption from taxation shall be granted except by general laws —." Now, Mr. Chairman, I am inclined to think that perhaps a greater evil exists in the granting of special advantages by general laws, than in the granting of special advantages by particular laws that make clear what it is that is granted. I have introduced and shall call up at an appropriate time a measure designed to meet the enactment of special laws for particular purposes in such a way that those who seek advantages from the Legislature shall do so in public, shall make clear their purposes and shall get from the Legislature only what is asked after full public hearing on notice to every one who is interested, and shall get it from the Legislature in the light of a pitiless publicity and not under the guise of some general law which nobody understands but the framer. I am inclined to think, Mr. Chairman, that we have gone too far with this theory of enacting general laws, to accomplish all of our purposes, and that one reason why the statute law of this State is in such a state of continual uncertainty lies in the fact that a great deal of legislation that should be granted, if at all, by special laws which indicate clearly their purpose and which should probably not be granted under any circumstances, can only be secured through general laws, the purpose of which no man but the framer understands. I am inclined to think that if any exemption from taxation is to be granted it should be

granted by a private bill introduced upon notice, advertised to the world, explained in open hearing, and concerning which the public and the Legislature has had full knowledge. Reserving, therefore, the right to further move to amend this provision, in view of whatever disposition may be made of the measure that I have introduced I shall not object to this section coming before you.

The Chairman — A rising vote is asked for on this proposition.

Mr. Sheehan — It seems to me the Convention ought to be very slow in putting its seal of approval upon this proposition even as is now suggested to be amended by Mr. Saxe. The proposition as we have it now is that "The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the State, or a civil division thereof." The man does not live who can tell the difficulties that may confront this State within the next twenty years. None of us can see what conditions may arise. Whether they be internal or whether they be external, international or otherwise, with which our country and necessarily our State may be confronted, when the very existence of our country and of our State will depend upon our ability to raise money by way of taxation. It may well be that giving exemptions to securities of the State or the civil divisions thereof may not amount to anything in times like these. But it may be that the securities which the State or its civil divisions would issue would have no market, and it might be well (within the province of the Legislature) when that time comes to permit the Legislature to enlarge it that the only way possible for them to raise revenue would be by making some exemption in the nature, if you will, of the Secured Debt Law, or adopt some other scheme —

Mr. M. Saxe — Does not the gentleman recognize that the power of taxation is plenary, that the State could confiscate all the property within the State, if need be, in order to raise money. I can imagine no situation such as the gentleman pictures that the State could not deal with, and deal with it very easily.

Mr. Sheehan — The gentleman is drawing altogether too much on his imagination. I am trying to look at a situation that may really seriously exist in this State within the next twenty years. It may well be that some kind of emergency may arise that will compel us to go temporarily into the money market for the purpose of getting money; it may be that we will have to resort to temporary expedients by way of taxation for the purpose of meeting a great crisis, and I say that we should not tie the hands of the Legislature, that we ought to trust the Legislature on propositions of that kind to face such a situation when the time comes and deal with it, and deal with it intelligently then, and that we

ought not for twenty years to tie absolutely the hands of the Legislature in this respect.

Mr. C. A. Webber — There is one answer to that that I think ought to be sufficient. All the State has to do in such a situation as that is to pay sufficient interest to cover the tax.

Mr. Ostrander — You do not have to wait for a time of war or a time of stress; the Legislature has already made a fool of itself with regard to this Secured Debt Law. Now if I went to a man with a note and told him I would pay him 50 per cent. on that note, if he would let me have the rest of it, every court knows that that contract is without any consideration. If a man comes down with securities on which he should pay a tax and offers to pay a little tax in lieu of the whole, that is exactly the same principle as the one which applies to the note. Now the Legislature should never be permitted to make such bargains as that.

The man that has a little farm pays a tax on the whole of it. He doesn't get a third of the return from his property that the man does who is holding these securities which he is bringing from outside the State and getting exempt from taxation here. Now, if nobody is to have any exemption then I don't press this amendment which I offered in a rather jocose spirit a few minutes ago, that the man who is struggling hard with the burden of debt should be free alongside of the man who does not have to struggle much with the security he has got; but if we are coming to a proposition where the door is to be left wide open for everybody to bring in his bonds and pay five cents and get away from taxation forever, then I think we ought to leave the door fully wide open for the man who is struggling to meet the interest on the mortgage on his farm and let him have a little rest from taxation himself.

Now, when the time comes when we have war and stress we are all patriotic enough, I think, to turn in and allow our property to be confiscated, if necessary, but while we are in times of profound peace I don't think we ought to confiscate the property of one fellow and allow the other fellow to go free.

The Chairman — The question is on the adoption of the Proposed Amendment as amended.

Mr. Barnes — Next Wednesday there is a special order of No. 754, which may conflict, if adopted, with this proposed section. I am not entirely clear on that point at this time, and, therefore, I wish to make a record that whatever vote may be taken at this time I trust that in the event that 754 is favorably acted upon that this section will be re-examined.

The Chairman — The question is on the adoption of this section as amended.

Mr. M. Saxe — Mr. Chairman, I ask for a rising vote.

The Chairman — A rising vote is asked for. All in favor of the adoption will please rise. Be seated, please. Those who are opposed may rise. Be seated, please. Ayes, 72. Noes, 25. The amendment appears to be adopted. The desk force asks me to call the attention of the delegates to the strict provisions of Rule 27. In explanation of it that certain work performed yesterday was not concluded and does not appear in the Record and does not appear upon the calendar. Rule 27 seems to contemplate the conclusion of a day's work by formal action, and it appears to me that unless the work is concluded all the work that is done falls, and that it has to be taken up anew. The reason of the rule seems to be that we must expedite our work as concluded and not delay it.

Mr. Wickersham — Mr. Chairman, do I understand the Chair to suggest that if the Committee rises without having completed its work that all the work done falls?

The Chairman — That seems to be the fact. With the exception of amendments that have been actually adopted.

Mr. Wickersham — Mr. Chairman, with due deference, that is not the procedure that was followed by the last Convention, and it certainly is not a procedure in conformity with what would be reasonable, and it seems to me the correct procedure is that which was adopted by the last Convention, that when a Committee rises and reports progress and asks leave to sit on the following day and continue its discussion the following day when it goes into the Committee of the Whole, the matters pending before it are taken up and proceeded with as though there had been a recess and that is what we did.

Mr. Olcott — That is what we did this morning.

Mr. Wickersham — That is what we did this morning, and, therefore, if the Chair's suggestion is correct, we would lose the benefit of any discussion or action that we did not close.

The Chairman — Mr. Wickersham, the desk force say they will take that matter up with you privately. The Clerk will read the next order of business.

The Secretary — Section 2. Taxes shall be imposed by general laws and for public purposes only. The Legislature shall prescribe how taxable subjects shall be assessed and provide for officers to execute laws relating to the assessment and collection of taxes, any provision of any other article of this Constitution to the contrary withstanding. The Legislature shall provide for the supervision, review and equalization of such tax.

Mr. Austin — With a great deal of delight I listened to the account of the two months' consideration the Taxation Committee has given this article. It is with great delight that I listened to Delegate Webber tell how every word has been weighed. I

want to say that I think the first sentence of this section was weighed in an apothecary's scales. It seems to me that it must have been conceived in the rumbling caverns of an erratic constitutional mind. After all this deliberation and weighing of words they produce a declaration to be inserted in the Constitution to the effect that "taxes shall be levied for public purposes only." Having had some experience with taxation myself, I think if there is any one single thing that is settled about that subject it is that taxes can only be levied for public purposes, and if the delegate who champions this measure has the slightest idea that under the present constitutional provisions taxes can be levied for private purposes I refer him to the case of *Bush v. The Supervisors*, 169 N. Y. 212; *Weisner v. The Village of Douglas*, 64 N. Y. 91; *Cole v. LaGrange*, 113 U. S. 1; and, if he desires, I can refer him to a decision on that point in every State of the United States; and, therefore, I move that the first sentence be stricken out.

Mr. M. Saxe — Let me say in answer to the distinguished advocate who has just given us the benefit of his research on the law that he is absolutely right. There is no question about that. The Committee understood that very well, but we do want it in the Constitution, because when the courts have decided uniformly that a certain principle of law is right, the best place to conserve that principle of law is in the Constitution of the State. Now, there can be no objection to that course, and I would say to the distinguished advocate that if he will examine the Constitutions of several of the other States of this country he will find those same words, and though the gentlemen assembled in their Constitutional Conventions may have had erratic minds they are minds that are respected and looked up to, not alone by the people of their states, but by the profession that they adorn, just as much as the gentleman who has just spoken.

Mr. Cobb — I move to amend Section 2, by striking out the last three words on line 4, all of line 5, and the first syllable of line 6. That strikes out this proposition: "Any provision of any other article in this Constitution to the contrary notwithstanding."

Mr. Griffin — I would like to call the gentleman's attention to the fact that that is the amendment that I proposed a week ago and which he will find printed on page 2 of the calendar. It is already on the calendar for to-day.

Mr. Cobb — If that is true, the motion that I have made is unnecessary, and I think the argument in favor of striking out such a proposition as that is so obvious that I will forego any further remarks.

Mr. Leggett — In answer to Mr. Austin's comment, I would like to call the attention of the gentleman to the argument of yesterday, which can hardly be forgotten in so short a time, and to the fact that this Convention voted by a very strong vote to put into the Constitution a simple declaration of the present status of education in this State, that it is a State function. There are as many decisions, I think, in favor of that as there are that taxes must be levied for public purposes; but this Convention, after a great deal of argument and discussion, voted, as I say, by a very strong vote, to put that declaration, and it is nothing but a declaration, in the Constitution. So my friend will see that the Taxation Committee did not judge the temper of this Convention altogether wrong in proposing to put this declaration in the Constitution.

Mr. J. S. Phillips — Mr. Chairman, I regret very much that I must disagree with my distinguished friend, the chairman of the State Board of Tax Commissioners, in reference to this particular portion of the amendment, and I am in hearty accord with the amendment which has been offered by the gentleman from Onondaga, Mr. Cobb, which eliminates or seeks to eliminate from the subdivision these words: "Any provision of any other article of this Constitution to the contrary notwithstanding," and while I have the floor —

Mr. Griffin — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Griffin — My point of order is that a motion has been made by Delegate Austin to strike out the first paragraph and that motion is under consideration unless withdrawn.

Mr. M. Saxe — The first sentence.

Mr. Griffin — The first sentence of paragraph 2 on page 2.

The Chairman — That point of order is not well taken, under Rule No. 37.

Mr. J. S. Phillips — As I understand it, Mr. Chairman, we are considering this proposal section by section, and not sentence by sentence. While I have the floor, I desire to call the attention of the members of this Convention to just what this proposal does so that there will be no deception of what it is designed by this proposal to accomplish. We have heard a great deal in this Convention since we met on April 6 about that time-honored principle, "home rule." There is probably no subject in the Convention that has caused greater outbursts of eloquence than that subject of home rule, and yet there is no principle more frequently violated by the committees, thus far in their reports to the Convention, than this very same principle of home rule. In this proposal we take away from the different localities in the State,

from the villages and the towns the right to make their local assessments. In other words, you empower the Legislature to take away from the localities of this State a right, a sacred right, if you please, which they have enjoyed ever since the organization of the State, and that is the right which has been guaranteed to them under the present section, Article II —

Mr. M. Saxe — Does the gentleman believe that the Legislature took away from the local assessors the right of taxing mortgages when it passed the Mortgage Tax Law, and that it took away from the local assessor the right of taxing unsecured debts when it passed the Secured Debts Law?

Mr. J. S. Phillips — The Court of Appeals has held that it has not, but that is not this question. In the case of the village of Pelham, the gentleman knows that when they attempted to elect a receiver of taxes, that was in direct violation of Article X of the Constitution and I am opposed to any proposal that gives the Legislature the right to take away from the locality the right to deal with its own assessments and to elect the officer to collect the taxes on those assessments.

Mr. M. Saxe — Has the delegate read Section 3?

Mr. J. S. Phillips — I am opposed to that, too.

Mr. M. Saxe — But you understand that Section 2 and Section 3 must be considered together?

Mr. J. S. Phillips — I was going to say I will not take up the time of the Convention but once in this discussion. We might as well — and I was going to consider Section 3 with the proposal in Section 2, because they really should be discussed together. Now, as I say, we have heard a great deal said here upon the question of home rule and the desire to extend to the different localities of the State further control over their local affairs, and yet here we have one of the fundamental propositions of home rule which the people have exercised ever since the State has been organized, and protected, if you please, by constitutional guarantee, and every effort which every Legislature has made to take that right away from the people of the locality has been declared by the courts of last resort in this State, to be in violation of this section of the Constitution to which I have referred.

Mr. Parsons — Is the matter of assessment, the purpose of taxation, purely a local matter when it involves collecting taxes for the whole State?

Mr. J. S. Phillips — My reply to the question of the gentleman from New York, Mr. Parsons, is this: That the burden of taxation on the locality is not, if you please, the amount of State taxes that is raised. For ten or twelve years in this State there was not a dollar raised by direct tax for State purposes. The great

burden of taxation upon the people in these localities is the tax which is raised for the governmental functions of the locality and not of the State, and I hope in the future some scheme of taxation may be devised so that the people of the State may again be relieved of the tax for purposes of running the expenses of the State government. Whatever direct tax is raised, that is the smallest item of tax that is imposed upon the taxable inhabitants of any locality and I repeat again that the burdens of taxation now resting upon the people of the several localities are the local tax, the school tax, the city tax. Why, even the county tax is small as compared with the school tax and the city tax. I live in a city of the third class.

Mr. Parsons — What difference does it make to the locality, as to the taxes, if you have a uniform system of assessment for the whole State? The assessment merely determines the valuation. The locality could still determine the amount of taxes.

Mr. Wadsworth — This does not make it uniform, it divides it into tax districts.

Mr. J. S. Phillips — By Section 3 it is proposed to give the Legislature the power to divide the State into different tax districts, which shall not embrace more than one county. Now, I will come to that proposition, if you will let me. In the city of Hornell, a city of the third class, which is a good example of a small municipality, the greater burden of tax in that city is the school tax, embracing practically the territory in the city of Hornell, the city tax. The State tax and the county tax is insignificant as compared with those two items. You say, why not have the assessment made by a board not chosen, if you please, by that locality, but, as this proposal contemplates, by a board for a county selected by the electors of the county? I would like to call the attention of the delegate or ask him wherein will you find people more competent to make a fair valuation of the property within their locality than the people chosen from that particular locality? For instance, if the county had the right to select a board of assessors, we assume it will be three, it might be possible that you would not have a single man on that board from any village or from any city. What would a person chosen from the country know about the valuation of city or village property? On the other hand, it might be possible, in the assessment of town property, to have on your county board men residing in the city who are wholly unfamiliar with the values of farm property and wherein would you get any better valuation than you do now by having the assessment made by a board chosen by the electors of that particular locality? My friend, the chairman of the Taxation Committee, in his argument the other night,

said that this is desirable. I represent, I think, a fairly representative upstate district and I know of no demand, and I know in fact that the people residing in those districts are unwilling to surrender this sacred right which they have enjoyed for years, and the adoption of this proposal would be a direct violation of the principle of home rule. Why do we clamor for home rule and here we take away one of the vital principles of home rule, the right of a locality to control its own affairs and to make its own assessments? My friend said that this was desired for the reason that the county of Westchester and the county of Nassau had made an effort to do this very same thing, but were prevented by the present Constitution. I submit to my colleagues who come from upstate that the county of Westchester and the county of Nassau are not representative of the upstate sections of the State. The county of Westchester, as you all know, is composed of an urban population. It is difficult in that county to distinguish the boundaries of the different villages scattered through the entire county. They are almost united, and you have perhaps a different situation than you have in the distinctly upstate, rural counties. But you take, for example, the county in which I live, the county of Steuben, thirty-two towns, with two cities of the third class with a population of 30,000, with all the other localities rural communities. I submit that the assessment would be fairer if made by men chosen from the locality, the township or village, if you please, than it could possibly be made by a board chosen by the electors of the entire county. Local assessors are familiar with the property within their territory. As a general rule the assessors chosen in the respective local tax districts are men who are familiar with the value of property therein located. I am aware of the argument which has been advanced by the State Tax Commission that the local assessors are not assessing the property at its full value. But that matter can be taken care of by the power of equalization, and when you have no direct tax, then I say it is no concern of the State whether or not the property within the locality is assessed for full value or under its full value, but the State has the right, in forming a basis upon which the State tax shall be levied, to equalize the assessment if there are inequalities or if some locality is purposely or designedly, if you please, lowering its valuation or fixing its assessment far below the real value of the property, equalization is a proper and sufficient remedy. Now, I don't care to take up further the time of this Convention. I simply want to call attention to this fact and I seriously invite attention of my colleagues who hail from the upstate districts to the fact that this seeks

to take away a principle which in my judgment the people of those sections are unwilling to surrender.

Mr. M. Saxe — I will yield in a moment to the delegate from Westchester, because I desire to answer the argument of Mr. Phillips on broad lines. What this section does is this: It is true it abrogates the home rule provision so far as the assessment of personal property is concerned, but with respect to the assessment of real estate, it re-enacts the home rule provision, except that it permits the county assessment plan where they want it. It is not mandatory. The Legislature does not have to make every county of the State one tax district. It preserves the present tax districts of the State as they now exist, but it makes it possible to have the county system where they desire it. It makes it possible to have one assessment which may be used for all the smaller tax districts within the larger tax district.

Mr. Dunlap — Will the gentleman permit a question?

Mr. M. Saxe — Will the gentleman kindly bear with me one moment until I finish my line of thought? I find that I am at a great disadvantage by reason of these interruptions, because, the subject being technical, it is frequently difficult to keep your line of thought in mind when so many questions are propounded. As I was saying, it is very advisable and desirable to have one assessment-roll for tax districts which are within a larger tax district, because you find to-day, under your various tax districts system, the same property assessed upon the different assessment-rolls at different figures. Now the desirability of taking the personal property assessment away from the local assessors is only an attempt to do constitutionally what the Legislature has been doing by indirection. It is the very vice I have been aiming at all through the debate upon this article. In order to reach mortgages you took mortgages away from the local assessor and provided for a recording tax; to reach the secured debts you took them away from the local assessor and provided for a registration tax, exempting them from local taxation. Now the Legislature can go on with that process if it wants to, and what would be the result. It will gradually exempt all personal property from local taxation in consideration of a tax paid to the State. I say that is unwise legislation. Now if you want to improve your system, which is the purpose of all of this, why, go at it manfully and make it possible under your Constitution to assess personal property through State officers, because that is what you are trying to accomplish by indirection. Let me show you what has happened to personal property in the State of New York and let me show you the tax debt that is carried on every farm in the State of New York, because they are very interesting figures.

Now, with respect to the taxation on personal property in this State; going back to 1898, the assessed value of personal property in this State, outside of the city of New York — we will leave New York city out of this argument entirely — was \$221,515,750, and gradually —

Mr. J. S. Phillips — What was the personal property assessment in Greater New York? Let us have that.

Mr. M. Saxe — For that year?

Mr. J. S. Phillips — Yes.

Mr. M. Saxe — Three hundred twenty-seven million, two hundred ninety-three thousand, seven hundred forty-three dollars. Now, gradually, from 1898, this amount of personal property assessment has become reduced in this State — I am speaking now of the personal property outside of the city of New York — until in 1914 we find that the total assessed value of personal property on the rolls of the State of New York is \$99,454,895. It has shrunk to less than \$100,000,000 from \$221,000,000 and over in 1898.

Mr. J. S. Phillips — Does he not know that it is on account of the mortgage tax and the bank stock tax, upon various other things which are assessed a certain percentage, and thereafter such property is exempted from all other taxation.

Mr. M. Saxe — It is true that that accounts for some of it, but not all of the shrinkage by a good deal, because there has been an increase of personal property, and what has become of that? I will anticipate the gentleman one moment because he is just going to ask me what has happened to personal property in the city of New York, and I want to tell him. In answer to his question before I said that the personal property of the city of New York in 1898 was assessed at over \$327,000,000. Well, in 1914 it was still assessed at about that figure, or \$325,000,000 and over, so that New York city has not done so badly as the rest of the State. But there is no question that there has been a great shrinkage of assessed value of personal property in this State, aside from the exemption arising out of the Mortgage Tax Law and the Secured Debt Law, and so on — after the bank stock tax. I think that was older than these figures. Now let us see the condition of this State with respect to taxation, because this is of great importance to the farmer. The remedies that will accrue under this article are to the benefit of the farmer more than anybody else, and I want the farmer to realize it and I hope he will appreciate it. The total net debt, after deducting sinking fund assets of the State of New York, excluding the city of New York — we will leave that city out because it has a great debt — is over \$372,000,000; to be exact, \$372,380,786.83. That means an average debt per acre of

\$13.10, or an average per capita debt of \$75. If we include the indebtedness of the city of New York we will then have a net funded debt for the State of \$1,367,981,688.83, or a per capita debt in this State of \$125, or a debt per acre in this State of \$47.80. Let me call your attention to what the Bureau of the Census points out with respect to this enormous debt of this State. I read from the Bulletin of the Department of Commerce on "County and Municipal Indebtedness," issued this year — 1915: "The civil divisions of the State of New York reported a total indebtedness far in excess of that reported by any other State. The total indebtedness, less sinking fund assets, was \$1,046,286,813, which amount was equal to 30.1 per cent. of the indebtedness of all the civil divisions of the United States and more than four times the amount reported by Pennsylvania which ranked second in total debt." These figures are not as great as the ones I have given you because mine are up to date and this does not run beyond 1913. "This amount was equal to the combined debt reported by all the States west of the Mississippi river and those of the South Atlantic division except Florida. The amount reported in 1913 was an increase of 143 per cent. over the amount reported in 1902. During the period from 1890 to 1902 the debt increased 115 per cent. The per capita debt was \$107.71 in 1913, having increased 90.4 per cent. over that reported in 1902." That gives you some idea of the tremendous tax burden that the property of this State has got to carry, even if the expenses of government do not increase, and nobody contends that they are not going to increase. For that reason we have got to have improved administration of our tax system. Why, we are away behind such States as Wisconsin, Michigan, Minnesota and even Kansas. They have tax systems that reach property. Now for the very same reasons that Judge Vann in that illuminating opinion of his in the Metropolitan Street Railway Case where he pointed out the advisability and the necessity of not permitting local assessors to assess special franchises because they could not deal with that class of property — I say, for the very reasons that he set forth in that case, we should take away from the jurisdiction of the local assessors the assessment of personal property, because —

Mr. J. S. Phillips — Do I understand the gentleman to mean that there are to be two separate assessing boards, one for real property and one for personal property? Does it not contemplate one board to make the assessment of real property and of personal property, and that is the county board to be chosen by the electors of the county, or not larger than the county itself?

Mr. M. Saxe — I am afraid the gentleman does not comprehend this plan at all.

Mr. J. S. Phillips — Will the gentleman answer my question at all?

Mr. M. Saxe — Will the gentleman state his question concretely without involving it?

Mr. J. S. Phillips — The question is whether this proposal contemplates the creation of two boards, one to make the assessment of real property, and one the assessment of personal property.

Mr. M. Saxe — The answer to that is that this proposal contemplates no particular kind of legislation. That is left to the Legislature to work out. All that this proposal does is to make it possible for the State to assess personal property directly; and it makes it possible, if the Legislature sees fit, to give to those counties that desire it the county system where they may have a county board for the whole county for the assessment of real estate. It does not provide for any particular kind of legislation at all. It simply permits something which cannot be done under the present Constitution because of the home rule provision contained in Section 2 of Article X, and the courts have repeatedly pointed that out, and we are simply trying to get around the situation made by Section 2 of Article X, so far as local assessors or local officials charged with duties relating to the assessment and collection of taxes are concerned.

Mr. Barnes — Do I understand you to say in relation to this proposal that it prohibits the assessment of personal property locally?

Mr. M. Saxe — Oh, not at all.

Mr. Barnes — It does not.

Mr. M. Saxe — Not at all.

Mr. Barnes — Then why do you put it in, in Section 3, "For the assessment of real property, heretofore locally assessed, the Legislature shall establish tax districts —?"

Mr. M. Saxe — That was to make sure that the home rule provision, so far as the assessment of real property is concerned, would be preserved. It makes it impossible to provide for the State assessment of real property because the officers to administer the Tax Law, so far as the assessment of real property is concerned, must be locally elected or appointed by local authorities designated by the Legislature.

Mr. Barnes — I wanted to make it entirely clear. I gathered from what you have been saying that local assessment of personal property was prohibited by this proposal.

Mr. M. Saxe — Not at all.

Mr. Griffin — I rise to a question of information and ask the Chair what is the motion now under consideration?

The Chairman — The motion under consideration at the present time? The motion of Mr. Austin to strike out the first sentence of Section 2.

Mr. Griffin — That is what I understood, Mr. Chairman, was the motion under consideration, and, without making a point of order to that effect, I would like to call the attention of the speaker to the fact that he is not considering that motion.

Mr. Austin — I will withdraw the motion and let him go right ahead.

The Chairman — The motion is withdrawn. There is nothing before the House now.

Mr. M. Saxe — The speaker will please understand that I merely yielded for the purpose of allowing an interruption. I had not finished.

Mr. Griffin — Well, then, Mr. Chairman, I rise to a point of order and ask that the Calendar of the day be followed.

The Chairman — The ruling of the Chair on the point of order will be to call upon the Clerk to read the next pending amendment.

Mr. Griffin — What was the ruling?

The Chairman — Your amendment will be read.

Mr. Griffin — What is that?

The Chairman — Your amendment will be read and considered now.

The Secretary — By Mr. Griffin, page 2, Section 2, after the word “only,” on the second line, insert the words “All valuations of property for purposes of taxation or assessment throughout the State and in every subdivision thereof shall be upon a uniform basis, to wit, the fair market value thereof.” Also, on page 2, line 4, after the word “taxes” strike out the comma and the following words, “any provision.” On line 5, strike out the entire line. On line 6, strike out the syllable “ing.” On line 6, after the word “supervision” strike out the comma and insert the word “and.” On line 7, strike out the words “and equalization.”

Mr. Griffin — Now, Mr. Chairman, as a matter of convenience for the consideration of the House, I ask that the second amendment be considered and acted upon first, namely —

Mr. M. Saxe — I must object to that and ask that the amendments be considered in order.

The Chairman — One moment, until Mr. Griffin has concluded his statement.

Mr. Griffin — After the word “taxes,” strike out the comma and the following words, “any provision of any other article of this Constitution to the contrary notwithstanding.” Now, I

think we can dispose of that in very short order. I do not believe that the chairman of the Taxation Committee will say that that is constitutional language and perhaps the chairman of the Taxation Committee, having had an opportunity to reflect, may do as he did yesterday when the light was thrown upon him — consent to that amendment.

Mr. M. Saxe — Mr. Chairman, I rise in the reflective light that now shines upon me from the gentleman from New York. In answer to him I will say this, that that phrase “any provision of any other article of this Constitution to the contrary notwithstanding” is of the most vital essence to this section because we must make it clear that Section 2 of Article X, so far as local officials charged with duties relating to the assessment and collection of taxes are concerned, is taken out of the home rule provision. Now, the reason we made the language broad — “any provision of any other article of this Constitution to the contrary notwithstanding” — was because we did not know at the time we framed the section just what the language of the new home rule provision would be, so that we had to use broad language. Now, I cannot see the objection to the use of that language that others seem to see. I have no pride of opinion about it. If it can be made clearer in any other way that is acceptable to all it will be acceptable to me, but what we want to accomplish is that Section 2 of Article X, the so-called home rule provision, is abrogated with respect to officers charged with duties relating to the assessment and collection of taxes. That is necessary, under the clear decision of the Court of Appeals in the Metropolitan Street Railway Case, 174 N. Y., and in the case of the Town of Pelham v. Village of Pelham, decided on June 18th, last. So I hope the gentleman will not press his motion with respect to that broad phrase unless he has a better phrase to offer.

Mr. Griffin — Mr. Chairman, I think that the Committee on Taxation might follow the very wholesome custom that has prevailed heretofore in this body, and that is to get into communion with the committee that has under consideration Article X, Section 2. He seems to fear the bugbear of Section 2 of Article X. Now, Section 2 of Article X provides: “All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors or other county authorities, as the Legislature shall direct.”

Mr. M. Saxe — Oh, please read the rest of the section. You have not read the whole section.

Mr. Griffin — “All city, town and village officers, whose election or appointment is not provided for by this Constitution,

shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct." Now, that, according to the gentleman's own confession, is the section that he is fearful of. Now does it not occur to the ordinary intelligence that the best way to get over any pitfalls in this particular section is to co-ordinate the section that he proposes to add to the Constitution with Section 2 of Article X, as it may be amended? In other words, let the two committees get together and frame a section that shall be harmonious, as to which there shall be no danger of conflict. But, attempting to put in the organic law of the State a provision such as this which is complained of — Delegate Cobb made a motion to-day to strike out the same sentence. The other day Delegate Olcott made a criticism of it. I have heard it generally criticised, and, in fact, the criticism is so general, that I hardly thought it was worth while considering or debating any farther, and I was in hope that the chairman of the Committee on Taxation would consent to this elimination because he is not completely cut off from relief. The dangers that he fears are largely in the air, and can easily be provided against by a suitable co-ordination with the committee having charge of Article X, Section 2.

Mr. M. Saxe — I just want to say, for the benefit of the gentleman, that I have had two amendments amending Section 2 of Article X, and they have been pending in the Committee on County, Town and Village Officers, but they have not been reported by the Committee; and in view of the fact that it — I think it was the sense of the Committee — thought that the subject could be taken care of in the Committee on Taxation, they have not deemed it necessary to report my proposals amending that section, and now pending before them.

Mr. Mereness — It was at the request of the distinguished chairman of the Committee on Taxation that the report upon his two amendments was withheld until a later date of the sitting of the Convention because he expected that he would be able to put over all that he thought was necessary through the medium of his article on taxation. That is the way I understand it. And while I am up for the first time in a good while I will take the opportunity of congratulating the distinguished chairman of the Committee on Taxation and his associates for discovering during this long period of incubation a new method of amending

the Constitution by putting a provision in one place and then putting another provision in another place, with the proviso that the latter shall be deemed to be supreme over the other provision that is in the same organic law of the State.

Mr. M. Saxe — I wish to say that the remarks of the chairman on County, Town and Village Officers, so far as the arrangement with respect to my amendment is concerned, are perfectly correct.

The Chairman — I understand that Senator Griffin has moved his second amendment. Is that right?

Mr. Griffin — That was my motion, and in view of the apparent conflict between the two committees I will now withdraw that temporarily and take up the consideration of my first amendment. I entertain the hope that the chairmen of the two committees will get together and be able to reconcile their differences —

The Chairman — Will Mr. Griffin kindly address himself to the subject of this proposed amendment?

Mr. Griffin — My proposed amendment has to deal with the wisdom of engrafting into the Constitution a principle which has been established, and I am very glad that the discussion to-day has brought out the admission from the chairman of the Tax Committee, in discussing Mr. Austin's motion to strike out the first clause, that whenever a principle is settled and established by judicial decisions, it ought to go into the Constitution. If there is one thing that is settled in the domain of taxation, it is that the only fair and reasonable and scientific mode of valuation of property is at its fair market value. And, my proposal is to crystallize into this section the following statement: "All valuations of property for purposes of taxation or assessment throughout the State and in every subdivision thereof, shall be upon a uniform basis, to wit, the fair market value thereof." We all know what inequality prevails in the matter of assessment throughout this State, and the consequences of this inequality may be brought home very close to many of us. Many of the counties of the State and tax districts, I am informed, assess property for the purpose of taxation as low as 25 and 30 per cent.; others assess property at 40 and 50 per cent.; others assess at 100 per cent. The following cities of this State have adopted full valuation as the basis of their assessment and taxation: New York, Troy — that is Rensselaer county — Albany, Elmira, Syracuse. The basis of valuation in Rochester is 80 per cent.; in Schenectady, 80 per cent.; Mount Vernon, 65 per cent.; Buffalo, 80 per cent.; Poughkeepsie, 80 per cent.; Yonkers, 80 per cent. Now there are the divergences with respect to cities. They are not so

great nor so marked as they are among the various tax districts in the various counties of the State. Now that is universally recognized to be a great evil. The chairman of the Committee on Taxation quoted with approval, on page 1029 of the Record, the words of Attorney-General Woodbury as to under-assessment in the State of New York. In an address before the Utica conference, Mr. A. C. Pleydell stated: "So far as it relates to the taxation of personal property, the general property tax system has utterly broken down in this State as elsewhere. Substitute after substitute has been enacted whereby personal property properly taxable under the general property tax system has been placed in special classes. The special franchise laws require an assessment by the State authorities at full valuation, which the courts hold must be equalized to the ratio used in each locality, and yet this can only be done either by litigation or by settlement, both of which are undesirable." The New York Tax Reform Association has been engaged for twenty years in the effort to secure improvement in the tax laws and assessment method. In the mass of legislation that comes before the representatives assembled at Albany, it is not easy to secure consideration for these subjects. Taxation is a question not generally understood and largely, for that reason, considered to be dry and uninteresting. Attorney-General Egbert E. Woodbury stated: "There are only a few tax districts in the State where the assessors make any pretense of assessing real property at full value as required by law, and I do not at this time recall a single instance where this result is actually attained. Under-assessment is the rule throughout the entire State, and in nearly all tax districts intentionally and purposely so. The range of average assessment by tax officers is from 25 per cent. to 80 per cent. of full value. Excluding New York city the average rate for the State would not exceed 70 per cent. and would probably fall under that figure. These figures are the result of my own deductions based upon conversations had with the assessors in the various tax districts of the State." That is, conversations had by Attorney-General Woodbury. He continues: "In a few tax districts, I believe the assessing officers are honestly endeavoring to comply with the law which requires the assessment of property at full value, and in those cases such under-valuation as is found to exist is accounted for largely by errors of judgment and a fear of over-valuation. In a very large majority of tax districts, however, under-assessment of real property is the result of systematic design. In most cases the assessors make their own law as to the basis of assessing property, in deliberate violation of statute, and then proceed to make oath to the assessment-roll, that they

have assessed that property at its full value. Occasionally an assessor who is exceptionally conscientious will refuse to sign the assessment-roll, or take the prescribed oath, and in one instance which came to my attention within a short time past, the entire board was so conscientious that it modified the oath to the roll so that it would read that the assessments were made upon a basis of one-third of the full value. This probably rendered the entire assessment-roll illegal if any taxpayer had taken advantage of it, but it satisfied the consciences of the members of the board of assessors." He continues further: "One cause tending to produce under-assessment is the cumulative effort of individuals to secure lower assessments of their respective properties. Individual effort, however, tends in a much larger degree to produce inequality, and cannot be said to account for a general policy of under-valuation, unless we ascribe to assessing officers the ulterior motive of following such a policy as a cloak to cover their acts of discrimination and favoritism, and the facts do not warrant such an assumption. The principal and underlying cause of under-assessment of real property is our system, perhaps more properly speaking, lack of system, of equalization by boards of supervisors. It will, therefore, readily be seen that the average supervisor regards himself in a better position to keep the assessment or equalization of his town low, where the assessment of the property is under the average assessment for the county than where it is above such average, and observation teaches us that that is very frequently the case. This condition is generally recognized by supervisors throughout the State and is well known to assessing officers. The result is under-assessment of property in violation of the statute and is the reason almost invariably given by assessors for under-assessment in response to inquiries as to why they do not assess property at full value. They frankly tell us that they do not raise their assessments to full value, because if they do their tax districts will be raised on equalization by the board of supervisors, and observation teaches us that too often such is the case." Now, what is the law with regard to this? Section 6 of the Tax Law provides: "All real and personal property subject to taxation shall be assessed at the full value thereof, provided, however, that the owner of personal property shall be allowed a deduction from full value of all his taxable personal property to the extent of the just debts owing by him." There is a clear mandate of the law which the assessors in every county of the State ought to feel obliged to obey, and I have no doubt that they would obey it were it not for the incongruities and inconsistencies which are elsewhere to be found in the same statute. Section 50 of the Tax Law provides for equalization. Equalization is a euphonious term, to reconcile disobedience of the law

with one's conscience. Section 52 provides for equalization by county boards of supervisors. Section 174 provides for your State Board of Equalization. In other words, a law is passed containing a clear mandate, a direction, and then in the same statute the door is opened and the men that disobey the laws are shown how they can reconcile it with their conscience, and an abstract mathematical rule is formulated, consisting of five parts, showing how these irregularities and inconsistencies in valuation might be equalized or harmonized. Now, as to equalization. Equalization is the euphonious title given to the process of reconciling disobedience and violation of law with abstract justice. Section 6 of the Tax Law requires that all property for purposes of taxation shall be assessed at its full value and then with brazen inconsistency provides in Sections 50, 52 and 174 for a case where Section 6 of the law is violated. It is bad enough to have this inconsistency in our statutes, but to engraft into the organic law of the State and continue this absurd system of equalization is certainly, to put it mildly, a very unwise procedure for a constitutional body. It is bad enough to have the inconsistency embodied in our statute without further offending our sense of decency and propriety by imbedding it in our Constitution. The word "equalization," as applied to the administration of tax laws, is a misnomer. Boards of equalization should be called boards of absolution, where transgressions of the clear commands of the law are condoned and perjured assessors who have defied the law are given absolution for their sins. Full valuation is the only safe and scientific policy to adopt in the administration of the Tax Law.

Mr. M. Saxe — Does the gentleman realize that if you have full valuation of bank shares you would interfere with the Federal provision as to the taxation of bank stock of national banks?

Mr. Griffin — No; no, I am not aware of it.

Mr. M. Saxe — Well, that is so.

Mr. Griffin — And I don't think that anything in this proposal would be in conflict with the national law upon that subject, because all that the national law requires on that subject is that the tax shall be paid upon the face value of the stock and not upon its actual value; but in our State where we are imposing a tax upon property, I think it is only just and proper that we should tax upon the full market value of the property, the same as we tax, or are supposed to tax, the full market value of land.

Mr. M. Saxe — May I call the attention of the gentleman to Section 24 of the Tax Law relative to the assessment of bank shares? And point out to him there that bank stock is assessed by taking the capital, surplus and undivided profits, and dividing that amount by the number of shares so as to reach the

assessable value of each share, and that is not the full market value. That law was enacted in order to comply with the Federal law in respect to the taxation of national banks.

Mr. Griffin — Well, there is nothing in the Proposed Amendment which is in conflict with any classification of property for the purposes of taxation. The chairman of the Taxation Committee has all along entertained the notion that this proposal was going to interfere with any proposed classification of property which he had in his mind. If you will carefully study the proposal, you will see what it has reference to. It has reference wholly to the valuation of the assessment of property.

Mr. M. Saxe — As I understand his amendment, he says that all valuations of property for purposes of taxation or assessment shall be upon a uniform basis, to wit, the fair market value thereof. Now, does not the gentleman see that under Section 24 of the Tax Law the assessment of bank stock in this State is not upon the fair market value thereof, but is upon an arbitrary method, to wit, the total of the capital, surplus and undivided profits, divided by the number of shares, and that the purpose of that legislation was that we would not discriminate against our banks in not putting a higher rate of taxation upon national banks as we are enjoined under the Federal laws. Now, therefore, it makes the fair market value impossible with respect to that class of property, and the same argument could apply to other classes of property.

Mr. Griffin — Well, Mr. Chairman, according to that, it would make full valuation impossible, and according to that it would make Section 6 of your Tax Law ridiculous. Then we find the situation to be further aggravated; it appears, that we not only have Sections 50 and 52 and 174 of the Tax Law laughing at Section 6, but we find that Section 24 of the Tax Law is laughing at Section 6. My idea in this amendment is to get somewhere. You are either in favor of assessing the property at its full value or you are not. Now, if Section 6 of our statute on taxation, called the Tax Law, expresses a principle that is right, then why not engraft it into the Constitution? The continuance in our law of the present conflicting provisions is a standing disgrace to the State, and if this Convention does not put itself on record in clear and unmistakable terms, I fear its standing with posterity will not be very exalted. The object of this amendment is to make a rule of conduct; to establish in our organic law a maxim of taxation that all men shall bear equally the burdens of taxation in proportion to their ability. This can be achieved by putting in our Constitution the fundamental principle of taxation that the measure of a man's ability is the value of his property,—

not half his property or one-quarter or one-eighth, but the whole of his property, because if you once concede the right of the tax measurer or assessor to fix the ratio at his own sweet will, there is nothing to prevent him from valuing one man's goods at full value, another man's goods at half value and so on with infinite variations as he might be inspired by whim, by spite, by fear, by hate, by favor or cupidity. The latitude given assessors in the State of New York, due doubtless to the invitation to evade the law which is contained in Sections 50, 52 and 174, has been responsible for no end of trouble and complications in the disposition of the burdens of the State. When you tell a tax assessor that he must assess property at full value, and then with a wink call his attention to Sections 50, 52 and 174 of the Tax Law, he is more than likely to take the hint, and in taking that hint he may be governed by one of a multitude of the emotions, not one of which may be deemed creditable. If he is able to keep down the assessments in his tax district he will do so, thinking that he will thus make friends with his neighbors generally. If he has a special friend whom he desires to especially favor, he will assess his property even below the general ratio he has fixed in his mind as proper for his district. If he has an enemy he will make the assessment as much higher than the general ratio as he thinks the patience of that enemy will endure. Outside of these varying factors of error, there are also the constant factors of error which experience has shown invariably exist. One of these is that the evils of under-valuation are more often borne and weigh more heavily on the small landowner than upon the large landowner. The chairman of the Tax Committee admits that himself, on page 1052 of the Record. It is a general statement, generally admitted. If you were told that it is not true, you would experience surprise, because you know that where the assessors are corruptible, the power to corrupt and the motive for corruption is greater among the large landowners than among the smaller owners. The saving in taxes on a large tract of 100 acres due to under-assessment is obviously more likely to appeal to greed than the trifling saving accomplished by the under-assessment of a one-acre tract. Jacob P. Dunn, former State Librarian and member of the Special Tax Commission of 1915, at the Indiana Tax Conference, in the proceedings of 1914, on page 39, states as follows; and I ask your attention particularly to this peculiar case: "Some months ago a centennial commission was authorized to take options on land for a centennial building in Indiana. The land wanted was held by a number of owners, none of whom were willing to accept the assessed value for their property, but the small owners asked only about twice the assessed value, while the large owners wanted three or four times the assessed value.

The commission waxed indignant over the rapacity of the owners, but that was not the explanation of the increase. The real meaning was that the small properties were assessed at about 50 per cent. of their true value, while the large properties were assessed as low as 33 per cent. and 25 per cent. of the true value. The small owners of Indiana represent nearly nine-tenths of the people, but what they do not realize is that they are paying every dollar of taxes that is escaped by the large owners. If the people could get this simple fact into their heads, they would soon dispose of this inequity of under-valuation. Under-valuation is the direct cause of this inequality, as is known by every tax expert in the country, and as has been demonstrated by every tax investigation. In New Hampshire in 1912, an earnest effort was made to secure the co-operation of the assessors in the appraisal of all property at its full, true value. The result showed an increase of \$116,593,000, or 44.7 per cent., and a decrease in the tax rate, notwithstanding the advance of that \$500,000 in the budget. The New Hampshire Tax Commission, in its Second Annual Report (page 37), referring to this achievement, says: 'Had the old system of undervaluation prevailed this year the large increase of taxes would have weighed much more heavily on property less able to bear it, for small holdings have always been appraised at nearer their actual value than properties which run into high figures.' " Now, if that is true, if the experience of other States is borne out in this State, as it appeared from the testimony of Mr. Pleydell and Attorney-General Woodbury and other experts who have given study to this question, then of what value is your equalization? I have taken the very complicated rule in Section 50, which consists of five separate and distinct formulas, and I assume a county containing four tax districts and designate them A, B, C and D.

Tax Dist.	Ratio [Rule 1] Per cent.	Assessed value	Full value	Equalized value, Rule 4 [Ratio .5926]
A	40	\$40,000,000	\$100,000,000	\$59,259,259 26
B	50	40,000,000	80,000,000	47,407,407 41
C	80	40,000,000	50,000,000	29,629,629 63
D	100	40,000,000	40,000,000	23,703,703 70
		\$160,000,000	\$270,000,000	\$160,000,000 00

Now, this is the way the equalization works out under the rule. We assume that the assessed value in each of these districts is \$40,000,000, then the full value of the property subject to taxation in tax district A is \$100,000,000, in B, \$80,000,000, in C, \$50,000,000, and in D, \$40,000,000, with a total of \$270,000,000. The assessed valuation, however, is only \$160,000,000. Now, in carrying

out the process of equalization, does the equalization board try to comply with the law that property should be assessed at its full value? Does it reassess? No, because, as Mr. Saxe will tell you, they cannot meddle with the tax assessors; under Article X, Section 2, tax assessors are constitutional officers. All you can do with them is to certiorari — use the writ of certiorari, and you may get relief in one isolated case. But as for the Tax Board going into the county and ordering a reassessment where it is obviously false and unjust and untruthful, they cannot do it, because they are tied up by Article X, Section 2, of the Constitution; and I want to say at this point that I am in perfect harmony and agreement with the ambition and the purpose of Chairman Saxe in his efforts to simplify and co-ordinate the laws of this State in matters of taxation. I do not believe that there ought to be these inconsistencies, these inaccurate, these wide variations in matters of property in our State and various subdivisions thereof. I believe we ought to give Chairman Saxe what he wants, that is, the right to go into a county or a tax district where a wrong has been shown and not remedy it in one isolated instance, but order a reassessment from the beginning. Correct the rolls, not equalize them. The trouble with Chairman Saxe is that he does not go far enough. He has gone into this bugbear of equalization. Now, according to the rule, the full value of the property in this hypothetical case which I have given in this account is \$270,000,000. The actual assessed value was only \$160,000,000. Now what Chairman Saxe would do, if he had his way, would be to go into this county and raise the assessed value of the property in these four tax districts to \$270,000,000? No, he would not. He would equalize; he would equalize, the same as I have done here in this hypothetical case, and he would add to some tax districts and he would take away from others under this complicated rule, and when he got through with it, in obedience to the terms of this complicated formulæ, we would find the valuation, instead of being \$40,000,000, would be as follows:

A	\$59,259,259	26
B	47,407,407	41
C	29,629,629	63
D	23,703,703	70
Total.....	\$160,000,000 00	

In other words, back where you started from.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now arise, report progress and ask leave to sit again at half-past 2 o'clock and continue the discussion now before us.

The Chairman — Those in favor of the motion will say Aye, opposed No. The motion is carried.

(The President takes the chair.)

Mr. F. L. Young — Mr. President, the Committee reports progress and asks leave to sit again at 2:30.

The President — The question is on granting leave to the Committee to sit again. Those in favor will say Aye, opposed No. It is agreed to, and the Convention stands at recess until 2:30 this afternoon.

Mr. Wadsworth — Mr. President, I ask unanimous consent at the present moment to make a report of the Committee on Charities.

Mr. Marshall — Mr. President, I object.

The President — Objection being made, the report will lie on the table until 2:30. The Convention is in recess.

Whereupon, at 1 p. m., the Convention took a recess to 2:30 the same afternoon.

AFTER RECESS

The President — The Convention will come to order. The Convention will go into Committee of the Whole to consider the Calendar. Will Mr. F. L. Young take the Chair?

Mr. Barnes — Mr. President, I would like to have a meeting of the Committee on Legislative Powers which was called for 2:30. May we be excused?

The President — Under the rule of the Convention leave is granted to the committees to meet at 11 o'clock or at any subsequent time during the session of the Convention.

(Mr. F. L. Young takes the chair.)

The Chairman — The Convention is now in Committee of the Whole for the consideration of propositions before us.

Mr. M. Saxe — Mr. Chairman, in view of the fact that a number of delegates desire to consider the proposals further, by themselves, I shall move now to suspend further discussion of the tax proposal at this time, and with your leave will call it up again later.

Mr. J. S. Phillips — This afternoon, Mr. Saxe?

Mr. M. Saxe — No, not to-day.

Mr. Griffin — Do I understand the delegate to say that it will be called up again to-day? Does that mean during General Orders?

Mr. M. Saxe — Not to-day.

Mr. Griffin — Then, Mr. Chairman, I would ask that it be set down as a special order for some day certain.

Mr. Wickersham — Mr. Chairman, a point of order. That could only be done by the Convention itself. The Committee of the Whole cannot make it a special order.

The Chairman — The point of order is well taken.

Mr. Griffin — I know that, but we might make an agreement now and have a request made of the Convention when we rise and report to the Convention.

The Chairman — The motion before the House is the motion made by Senator Saxe, that further consideration of proposal —

Mr. J. S. Phillips — I want to ascertain from the Chairman when he intended again to move this proposal.

The Chairman — As I understand it, there could be only a gentleman's agreement, anyway.

Mr. J. S. Phillips — I will take Mr. Saxe's word on that.

The Chairman — I want it understood that you cannot take any action that is binding.

Mr. M. Saxe — Mr. Chairman, I had in mind having an opportunity to discuss this proposal in private with some of the delegates who seemed to be a little in the air with respect to it. Now, I cannot say at this time just when we will be through with these informal discussions. It might be in a day or two and we might have to let it go over until next week. I do not like to bind myself down to any specific time, unless it should be the wish of the Committee of the Whole that it should be fixed for a day certain. That is agreeable to me if it is the wish of the Committee.

Mr. Wickersham — I want to suggest that the special orders and general orders have been made by rules reported from the Rules Committee and I think we cannot do it in the Committee of the Whole and I think the calendar of the business before the Convention can be better arranged through the Rules Committee and its report than in the body at large.

Mr. M. Saxe — For that reason then, I think, Mr. Chairman, it is safer for me to insist upon my motion, simply that we suspend at this time, but I reserve the right to call it up at a future time.

Mr. J. S. Phillips — Addressing myself to the motion. Now, it seems to me, so far as I am concerned, that those who think as I do in regard to this one proposition were ready to fight this out this afternoon, but we would like to have some assurances of the gentleman. I apprehend that no delegate will move his proposal. All I ask is some assurance that he will not call it up Friday or Saturday of this week.

Mr. M. Saxe — I would be glad to make that arrangement, that I will not call it up Friday or Saturday.

Mr. J. S. Phillips — That will be all right.

Mr. Chairman — The question is on the motion offered by Mr. Saxe, that the further consideration of this Proposed Amendment

be deferred. All in favor of that motion will say Aye, opposed No. The motion is carried and the Clerk will read the next order of business.

Mr. Griffin — I move that when the Committee rise they report progress upon this bill and ask leave to sit again.

The Chairman — You have heard the motion. Those in favor will say Aye, opposed No. The motion is carried.

The Clerk will read the next order of business.

The Secretary — No. 751, General Order No. 13, by Mr. Dunmore.

Mr. Dunmore — On the preliminary call of the calendar I announced that the amendment would be moved. Since then I have been requested to defer the discussion and argument until next week and I am glad to comply with the request.

The Secretary — No. 741, General Order No. 17, by the Committee on Legislative Organization.

Mr. Brackett — That proposal is moved, but inasmuch as I am a protestant and have filed a dissenting report, the management of the amendment is in the hands of Mr. Lindsay.

Mr. Lindsay — The Committee on Legislative Organization had this matter under consideration at a number of its meetings. The consensus of opinion in the Committee seems to be that some increase should be made. The Committee was somewhat divided, those favoring a raise in the compensation were divided slightly upon the amount, one person who signed the minority report desiring the amount to be placed at \$2,000 instead of \$2,500. We had before us a number of persons who have served in the Legislature. We had before us representatives of labor organizations of the State and since the bill has been reported the members here have received a memorial of the Associated Manufacturers and Merchants of New York State, Buffalo Chamber of Commerce, National Founders' Association, Employers' Association of Buffalo, Buffalo Builders' Exchange, in which, while not referring to this particular report, they do indorse the increase or an increase of the compensation of legislators which was proposed in a bill by Mr. Curran. So that, in addition to the demand which we stated came from labor organizations by the minority report in the Committee, which is Document No. 20, I think, containing both the majority and minority reports, we have also here those occupying an exactly opposite position from the labor organizations favoring the same proposition. I merely speak of this to show that there is a general sentiment, both among labor organizations and among manufacturers' organizations, and I think pretty generally over the State, that legislators

are not sufficiently compensated and that there should be some change. The minority rendered their opinion in opposition to that of the majority upon the general principle that you cannot compensate legislators at all sufficiently, that the people will not stand for such compensation as would be real compensation for a man who serves as a legislator, but that it is an honorable position, and there are people well qualified for the position who are willing to serve, notwithstanding they serve at a loss. That position does not appeal to me in the least. As a young man — and I speak of myself personally here because it is the experience I know of a number of young men — years ago I started to participate in legislative matters. I suppose I was like a great many young men of to-day. I had, at considerable difficulty and expense, gone through college. I had prepared myself for admission to the bar. I had commenced to practice, in the meantime had married. My income was necessarily small and I served four years at a loss of about a thousand dollars each term. At that time I found it was impossible for me, even at the request of the people of my district, to continue longer in that position. Now I know at the present time in my part of the country young men who would make excellent legislators, whose services would be of value to this State, but they have passed through just the same experience. Here is a young man that I have in mind now; put himself through Cornell University, through the law department; afterward went back and put himself through the arts department, thoroughly competent, because of the particular studies that he has made there in a certain line, to represent the State and do good work for it. It would be utterly impossible for him, in the present state of compensation of legislators, to come here with the intention of serving more than a year or two at the most. If he ever expected to lay up anything, if he ever expected to maintain a family, he would have to quit at the end of at least two years, or else he would have to get money in some way other than from his salary. The original compensation in the Constitution of 1846 was \$3 a day for not to exceed 100 days, and some little extra provision in regard to some of the officers. In 1867 the Constitutional Convention made a provision for \$1,000. That was voted down, as were all the amendments of that Constitutional Convention, but in less than six years afterward, on an amendment especially submitted, the people voted to raise the salary to \$1,500. This was over forty years ago and it has remained at that amount ever since. There was a proposition submitted in 1911. I have not my notes of the exact proposition here, but as I recollect it, it provided for \$3,000 for Assemblymen, \$3,500 for Senators, and three cents a mile for the distance actually traveled during the term. Now, that was voted down, but it

is no expression of the opinion of the people in regard to a just compensation for legislators for this reason: The amount was larger than is proposed here by considerable. It was quite a large increase. Not only that, but it provided for mileage which was on its face higher than the mileage actually charged by the railroads, and the people would see no use, as far as that was concerned, if they thought of it at all, in voting for a mileage which would actually make a profit for the members. But not only that, in that year there were seven amendments submitted to the people, seven amendments to the Constitution, and every one of them were voted down, so that it was not only the matter of the increase in the salaries of the members. In all probability, that did not have any effect owing to the fact that all the amendments were voted down. Another reason for its being voted down was this: Only about one-half of the persons voting at that election voted on those amendments at all, and they were defeated by considerably less, greatly less, than a majority of the votes cast at that election. It has been said that the people are not ready and will not stand for an increase in the compensation of legislators. I confess that I cannot believe that, nor have I found any evidence that would warrant that conclusion. I can only speak for the feeling generally among the people with whom I have associated and talked on this subject. I find the general opinion among farmers, laboring men, merchants, etc., the general opinion is that the compensation is perfectly ridiculous, and that you cannot expect anybody to serve for it that would amount to anything, and in that way I think it injures the character of the persons whom we select to go to the Senate and Assembly and strikes down in a way the dignity of the body. It is the general opinion among the people that the Legislature, members of the Legislature, are "cheap skates." I use that expression because a man used it in talking over this matter with me. He said: "You cannot expect young men in active life to leave their business, leave their work, and go to a Legislature and expect to continue any length of time in that Legislature at the salary that this State is paying for their services." Now, I don't want to make any extended remarks in regard to this. I think it is the proper place to settle that question in this Convention. I don't think it should be left to the Legislature to settle its own salaries, and I don't think they would care further to undertake the provision, because of the feeling it creates among the voters generally of what is known as a "salary grab." But this Convention, wholly divorced from anything of that sort, is able to say, coolly and properly, what is a just compensation, or a reasonable, just compensation to prevent loss by members who give their time and service to the State, and I think this Convention should do that. Forty-nine years I think it is

since \$1,500 was established as the rate — a long time. A great many changes have occurred. All other salaries in the State have been doubled, some of them trebled, since that time, but the Legislature which neither gets mileage — the legislator, who neither gets his mileage, except about five trips, nor gets any additional compensation of any sort, serves at an actual loss. It is a matter of justice. I don't believe the people are opposed to justice. I have more confidence in the voters of this State than to believe that they want the members of the Legislature to serve at an actual loss or even at a beggar's wage.

Mr. Byrne — May I ask whether the term "traveling expenses" is meant to include anything more than railroad fare?

Mr. Lindsay — I took that question up with the member of the Committee who wrote the expression. I did not understand it just at the time of the report. He understands that it includes the actual traveling expenses, just like State officers who make their reports and furnish their vouchers for pay, so that it includes just exactly what he pays out.

Mr. Byrne — Just what would that include?

Mr. Lindsay — I imagine that that would be settled by the Comptroller's office, as it is in the case of State employees, and the Deputy Attorney-General and employees of that sort. They have rules which require certain reports made before these vouchers are paid. I should say it included his railway fare, his meals, if he had any, and his sleeping car, if he traveled at night. I think that is what is paid by the State for State officers and State employees. And, the State, of course, or the Comptroller's office, always requires vouchers and receipts for these payments so far as they can be given. For railroad fares you do not have to give a voucher, as I recollect, because the rates and number of miles show that. Now, on the question of what effect this is going to have on the constitutional amendments generally. This is a thing we have got to look at and it is a matter that was raised in the Committee. There is not any question but that by resolution of the labor organizations of this State, they asked for a reasonable increase in the compensation. They did not state the amount, and the representatives stated that the reason they did not was that they thought the Committee was more able to judge, or this body was more able to judge what increase should be made than they, and they made no suggestion, but they thought there should be a reasonable increase. Delegate Curran had a bill before the Committee for the same purpose and then various manufacturers and chambers of commerce and employers' associations have gotten out a circular and I notice they have gone through and condemned most of his bills. But out of all of them

they approved the bill for the increase in compensation of legislators, so that it may be assumed that manufacturers generally are in favor of the increase. I believe that for that reason it will be a popular measure in the adoption of the Constitution, will create no difficulty whatever and will not take a vote away from it whatever. Now, in regard to the labor organizations, I thought they made a very definite and proper argument before the Committee. That argument, in brief, is this: They would like to send men to the Legislature occasionally; they have sent men occasionally but have to pick them from officers who draw salaries so that they can afford to serve here. They have bright young men, as we all know, that they would like to send here to become acquainted with the affairs of the State and to represent their interests and it is right that they should have them. Those men are elected. It costs a little something to be elected. They come down here and they want those men to live, associate with other members of the Legislature, be free from pressing necessities sufficient to attend to their duties, and when they return home, if by reason of their absence they have lost a definite job, that they may have some opportunity to look about to secure another, and that is a very important thing to those people. Now I am not engaged in manual labor, but I do believe that one of the best things that could happen to this State or any State would be to make the coming of men of every class, including laboring men, to the Legislature of this State, and to such conventions as this, as easy as possible. Men get a broader view when they take part in legislation, they carry their views back to their constituents; they become better citizens, the men who depend upon them for advice and direction get better advice and direction, and, under the present amount paid for services, it is practically impossible for any person to start upon a legislative career and go for any length of time unless one of two things is true; he must have money of his own at hand, or he must be a grafter. That is absolutely true — or he must quit — and this is designed in a fair way to try to relieve that condition.

Mr. Byrne — Don't you think it would be wiser to specify so much a mile, that is, this term "traveling expenses" might raise the question of just what that meant. People might not like the words "traveling expenses."

Mr. Lindsay — So far as I am concerned, I would say this, that I would be willing that it should be "traveling fare."

Mr. Byrne — Once a week?

Mr. Lindsay — Actually paid. I think the expression was just a general expression, perhaps was not considered particularly as it did not make a great deal of difference. Now I want to say

this before I close, that this increase suggested would not make an increase of probably to exceed \$175,000 in the entire State for the Legislature. Some have said that it would make an increase of \$200,000, but as near as I can estimate it, according to the places from which members usually come, it would be in the neighborhood of \$175,000.

Mr. Brackett — This is not a question as to which anyone can get very much excited. It is a pure question of policy. The line of cleavage between the opposing schools is clear and distinct and very likely each member of this Committee has already made up his mind and any discussion of the matter is entirely useless. But for a moment I want to call the attention of the members of the Committee to what the different schools of thought on the subject are. There is and there always has been and I presume there always will be a class that believe that the public service should pay high salaries. They believe, and I presume believe sincerely, that the payment of high salaries attracts to such service a higher and a better conception of duty and a higher performance of that duty. The other class believe that compensation in the public service should, both for the benefit of the State and of the individual, be small, and that the real and genuine compensation that comes to one for the service that he renders in the Legislature comes not from the money that he receives, comes not from any material benefit because of any such service other than his experience, but that the compensation comes and must come from the consciousness of duty well performed and from the knowledge that he acquires in the public service which is of benefit to him during all his after-life. I believe, Mr. Chairman, and I believe profoundly, that the best service to the State is rendered, not by the professional politician, not by the man who gives all his time to political work, but by those men, who, interested in the questions involved in the doing of the State service, are willing to pinch out of the busy hours the time necessary to render the public service for which they may be selected. As I recall the recollections of the last twenty years and the men whom it has been my privilege to meet in the public service — some in intimacy, all under observation — I declare to you here and now, Mr. Chairman and members of the Committee, that the men whose services were worth while to the public, that the men whose services amounted to anything to the State, were men who were themselves profoundly busy, men to whom it was a genuine inconvenience to come here and to do the State service; that it was that class of men whose work was of value to the State and of value to the public. That kind of men are not attracted by the salary; it is rather by the opportunity to serve; it is rather by the experience that comes to them; it is rather because, devoted

in a measure to the public service, they were willing to render such service and without any compensation that can be called adequate. The public service is not the place to amass a fortune. The public service is not the place where a man rendering it can pile up savings. The public service, to be of consequence and of good, must not at all depend upon the salary or the material benefits that come to him who renders it. Then, too, comes the other side. I know it is old-fashioned; I know that I am the most reactionary of reactionaries about everything. I can prove it to you by any paper that ever takes the pains to mention my services at all. You do not know, Mr. Chairman, how I wish I could be a Progressive when I see the brethren who can wear the bearskin shako and can toss the baton the highest and catch it the surest as it comes down, at the head of the Progressive column! I have been so sorry to think that I could not do that. It is the most delightful of places. And then, too, it evokes the praise of every little penny-a-liner who sits around the front of the desk here and gets down his solemn opinion to the newspapers as to what constitutes great public service. And some one of the boys here whose opinion would not be taken on the question of selecting the family cat solemnly puts his opinions down on the paper and it goes down and is published as the result of the solemn conclusions of the great paper itself. I wish I could get the approval of those boys just as much as any one here. It is not because I do not want it. It is because, Mr. Chairman, I believe that there are certain basic principles that we must stand by or we are setting sail on a soundless and a shoreless sea. I believe we should, among other things, stick to the old-fashioned standards of public economy. Now that is an unpopular thing and it relegates me clear to the rear of the procession instead of to the head, but I believe it, and I believe that the great majority of the people of the State believe it. I appreciate that it is only a matter of two or three or four hundred thousand dollars. Of course, it is a mere, insignificant amount! While I hesitate to recur to it again, I still cannot forget that it is the man that is holding the plow-tail that finally has to pay the large part of it. It is not the gentlemen down at the corner of Broad and Wall streets that have the securities that when tax day comes can be sent over into Jersey and thereby avoid all taxes. There is not a single acre of the stony fields up in Greenfield or the sands of Wilton that can be moved an inch when tax day comes around, and they have to pay on every one of them. And that is the kind of men that have to pay the expenses of the State. I do not want, Mr. Chairman, to take any position that even the most censorious of our friends on the row in front of you may regard as looking toward demagoguery, but I

believe in economy for the State precisely as I believe in economy for myself. Oh, it is so easy to spend the other fellow's money, Mr. Chairman! Why, do you know when the rare client sends me on the rare trip to New York I never fail to travel on the best train and in the best car and if I can get it I take the drawing room. It is so easy to go back and tell him that he can pay for the elegancies that I enjoy, but when I go for myself I generally take the small seat at the end of the car up in the smoker. It is a question each one must decide for himself. I believe in the small salary. I do not believe it is the time to raise the salaries of the members of the Legislature as I do not believe it is the time to raise the salaries of the judiciary, or the salary of the Executive. When these measures come up I shall beg leave to record my dissent against any increase there. The people of the State are in no mood to have a general increase of salaries. I know that my friend from New York, Mr. Nicoll, will find in this another evidence that the Constitution which we will submit is going to be buried again. I do say in all earnestness that if I at all interpret the sentiment of the people among whom I live and whom I am trying as best I can here to represent, they are in no mood to tolerate any increase of executive, judiciary or legislative expense. I sometimes think, Mr. Chairman, if we can, by any stress of effort, keep 95 per cent. of the amendments proposed in this Convention out of the document which we are to submit, and then, when the day comes, can beat the other 5 per cent. at the polls, we can go home and think we have done a good summer's work. But whether that be so or not, I want to be recorded when it comes to the matter of the State's expenses, I am not willing to vote \$250,000 to \$400,000 additional of increase of the legislative salaries. I am not willing to vote the something over a million dollars that the proposed increase in judicial expenses would entail, I am not willing to duplicate the salary of the Executive, without any reason to attempt to constrain the opinion of any man in the Convention, leaving it absolutely for each one to decide for himself and to go home and justify his act to his constituents. I am willing to submit the question, believing that we are rendering the truest service not only in the economy of the people's money, but in the example of the economy of the people's money that we here give if we keep the salary down, believing, too, that by the very action of curtailing the salary and not increasing the salary of the legislators a single penny, that by that very action we secure and continue to secure to the State the best service that we can hope to have in a representative government.

Mr. Parsons — I hope that the amendment will be adopted, and I cannot share the foreboding regarding the Constitution that Senator Brackett has given us if we shall incorporate this within the

proposed Constitution. As against what he prophesies, I have an instance of history which will show that the other result will obtain. I was a member of the National House of Representatives when the salaries were increased from \$5,000 to \$7,500 a year, and that increase was made upon the motion of the member of Congress from Senator Brackett's district.

Mr. Brackett — Whose term was about to expire and who never went back.

Mr. Parsons — Well, he could have gone back; he could have gone back.

Mr. Brackett — He didn't go back.

Mr. Parsons — I repeat he could have gone back, and he was succeeded by a Republican, his close friend. There is no doubt that he could have gone back, and you can see nothing in the vote of Saratoga county in the election of 1908 to prove, or to show that the people there were opposed to paying a fair salary to the members of the National House of Representatives. And the reason why an increased salary should be given is not that it be enough to enable a man to amass a fortune upon, but that any man ought to be able to go to the Legislature and while there live free from anxiety and be enabled to devote his whole time and attention to public work.

Mr. Dahm — I desire to say a few words in regard to increasing the compensation of our legislators. I notice that my colleague, Mr. Curran, who introduced a bill in reference to this matter is unavoidably absent and cannot state his position on this matter. I believe, as do many others in the State of New York, that the compensation now paid to members of the Assembly and the Senate is far too small. I desire that when I come to Albany in the future and meet my Assemblyman, I can find him staying in some first-class place of abode. I hate, and I feel chagrined when I come to Albany now to see an Assemblyman from any Assembly District and have to go around and find him in a hall bedroom in some of the streets surrounding the Capitol. And, it is, indeed, a fine situation that men whom we send here to represent us as law-makers, that we find that they have to stow themselves away in places not frequented by their better-situated friends in the Assembly — find them stowed away in bedrooms so that they can possibly make both ends meet. We find in the Assembly to-day and in the Senate many clerks who receive far more compensation than our so-called legislators. I do not agree with the distinguished gentleman from Saratoga that there are many men, particularly men who have to work for a living, who desire to come to Albany, for the honor and glory of it, because there is no glory in returning to your constituents and having them brand you as a grafter. Every day in this Convention we hear some member of the Convention get up and

talk about the fool legislator. Now, Mr. Chairman, the proposition offered by the labor organization and spoken of by Mr. Lindsay is only fair. Fifteen hundred dollars! Is there any man in this Convention Hall to-day who can honestly say that the amount of compensation that he has received has met his requirements while here in Albany? There is not a man in this hall who would say honestly that the amount of money that he has received as compensation meets his expenses while in this city; and in the name of God, how can an Assemblyman who has nothing to depend upon to support himself while here in Albany and his family in some far-distant city support himself on any such sum? There should be no debate on this question to-day before this Convention. I believe, as I stated before, that every member of this Constitutional Convention realizes the inadequacy of the amount of money that he receives as compensation, and I sincerely hope that the vote on the adoption of this Proposed Amendment will be taken immediately, and that it will be disposed of at once.

Mr. Leggett — This is an opportunity that I am not willing to let go by. This is probably the only opportunity I shall have in this Convention of recording my hearty approval of a measure advocated by the labor union men, and I cannot let the occasion slip. I am sincerely and heartily in favor of an increase, and for the very reasons that my friend, Mr. Dahm, has so feelingly alluded to. I think it is a shame that in the State of New York it is not permitted to a man who has no resources, except the labor either of his hands or his head, and who has a family to support — I say I think it is a shame that by reason of a small salary he is not permitted, when the people of his district want him to come to the Legislature — he is absolutely barred from doing it by the lack of adequate pecuniary compensation, and I hope that this measure will be passed by the Convention.

Mr. M. Saxe — I desire to voice my approval of this proposal. I had the honor of serving some four years in the State Senate and I know of my own knowledge out of that experience that it is a hardship on a good many men to have to serve the State in the Legislature at the present salary, and I think that the salary proposed by the Committee is a very reasonable and fair salary. Just as Mr. Leggett has pointed out, I think it is a rank injustice if a man, who is desired by the people of his district to represent them in the Legislature and who has no means, is to be denied the opportunity simply because the compensation is inadequate. I think that it is all wrong, and I think that it is in the interest of the public good and in the interest of the welfare of the State that the salaries of the legislators be made fair and adequate.

Mr. Curran — Mr. Chairman, in 1911, I believe that the Proposed Amendment to the Constitution relative to increase in salaries of Assemblymen and Senators — I may be mistaken in the date, but I had the honor of attending the convention of the working people of the State of New York and I proposed a resolution offering an amendment then to be voted upon that Fall to increase the salaries of Assemblymen and Senators and my contention was then that men in moderate circumstances and especially workingmen who aspire to be members of the Assembly cannot afford to make the run. The simple reason is that even if elected the expenses that are necessary to any man to undertake the campaign are of some importance, and his time spent is such that he virtually has nothing to stow away after his labors have been performed. In 1914 at the convention held in Schenectady another resolution had been proposed, also favoring an increase in salary to Senators and Assemblymen, and we favored a larger increase than most other bodies, most other men who had proposed amendments. We believed that you cannot pay the representatives any too much money. The labor organizations in themselves have no fear of paying a man a good salary. It is a peculiar thing, when I appeared before the Committee to argue in favor of this bill there were about ten or fifteen questions asked me that in my mind seemed ridiculous. My friend Bunce has made the statement. One of the questions was that men would seek nominations for Assemblymen or Senator or member of the Constitutional Convention whether they were paid any salary or not. Well, let me make this clear to you. As far as I am concerned, and the working people of this State, we don't want the men if our influence is such as to prevent those men from attending the Legislature or the Senate or a body of this character, because the inference is that they must have certain things at stake or they could not afford to come. And they tell you that the honor is something. I agree to that and if I could give my service free gratis to this body I would be willing to do so. But it would be necessary to have something to take care of my family. It is well to come here as an honored gentleman, and be named as such, but you might find when you returned home that a warrant would be issued for non-support. Such a condition has existed among members of the Legislature. Now why should a man be placed in that position. When you form a commission either the Senate or the Assembly, creating a commission, what is the first proposition? "How much can we pay the members of that commission" and why do you ask that question? Because we must get the best men. That is why you make the salary \$12,000 or \$15,000 a year. Why not make it a salary of nothing and let them serve the people free gratis, let them give their talent and their learning to the people free? Oh, no! They tell you they

must be amply paid and receive a salary so that they shall be free from any political or outside influence. You consider the members of the Assembly, that they do not amount to anything, that they should live from hand to mouth. Now we, Mr. Chairman, have proposed that the members of the Senate and Assembly should be adequately paid and we believe that \$3,500 is not too much. We believe that that is little enough. It would certainly give them an opportunity to be a little bit independent and occupy a position the same as others while they are here, and give men of moderate circumstances an opportunity to make the race for the office provided they see fit. Many business men, young professional men and others, cannot afford to represent their constituents or their district for the simple reason that the salary is inadequate to take care of their wants. I know that I could not do it and to the man who says it does not make any difference whether a salary is paid or not, from my way of thinking I trust those men will never have an opportunity to be elected a member of the Legislature because they must have other interests at stake. I heard a very prominent gentleman appeared before the Committee on Governor and Other State Officers and made a very lengthy address relative to the condition of affairs and what he believed the best policy to pursue relative to electing State officers and I listened with considerable interest and I believed it was a very practical address, but he made this statement, that if he had the selection of men that he knew would be only too willing to act as Senators and Assemblymen regardless of what the salary may be that the number he knew of that class of men, he would desire them to represent the people. From all of his address that is the only part that I disapprove of. I have heard a member of this Convention say that he would lose at least \$20,000 for the time that he is representing the people at this Convention. Well, a man who can afford to lose \$20,000 for three or five months at this Convention, I am sure will miss nothing. I cannot lose \$20,000 or \$20. But if he can lose it he can afford to represent the people. It does not make any difference to him, but naturally my conclusion is drawn that if he can lose \$20,000 in five months his compensation for the year must be so great that he won't miss it. That is the only conclusion I can arrive at. It is a remark made off-hand sometimes when a member returns to his home that had the honor to represent the people, the remark is made "if you didn't get enough money why don't you go to the New York Central and get your bit?" That remark was made in the Committee, and I thought that is too bad. I don't believe in that sort of thing. Men are criticised sometimes when their intentions are the best and I am one of the last men in

the world that wants to criticise anybody. If they want to represent this Convention or any other convention free gratis, I am perfectly satisfied, but if I should have any aspiration or a man of the same ranks that I have the honor of being in — all my life has been spent as a workingman; I will admit the last few years I have occupied a little different position, being deputy city clerk of the city of Rochester quite a while; but in that position I have received enough information, as a man naturally would by being connected with an organization or politically as you may say, that I hear things that I know in my own mind are absolutely incorrect. Men sometimes charged with things that I know in my mind are untrue; and I resent it and I would resent the same thing here, although I have heard those things mentioned, we all know they are mentioned, time and time again, but I want to say to you gentlemen, never in my life have I made such a statement. I would resent it in any place wherever it was made, but to my mind I believe the request made for increase of salary for members of the Legislature is not unjust, it is not unwise. Other department heads, their salaries have been set at a very high standard — \$8,000, \$6,000, \$8,000, \$10,000, \$12,000 or \$15,000 a year. No one ever gives any thought to the Assemblyman. And another thing they say that the people resent it. The amendment that was offered three or four years ago, they may have resented it, they resented all the other propositions, but they may have resented it for this reason: It was initiated by the men who would receive the benefit. Now we are not members of the Legislature. There are only a few here. They will be running this fall. It has been initiated in the Convention and I must say I feel a little honored in having the Merchants' and Manufacturers' Association of New York State, the Buffalo Employers' Association of Buffalo, Buffalo Builders' Exchange, and I have been familiar with those officers for years, and the Employers' Association of Buffalo, and the Buffalo Exchange and they approve of the bill increasing the salaries of members of the Senate and Assembly. Now, it must be a bill that is satisfactory to both interests. It ought to be one that there would not be any trouble about, provided it was passed and that would receive favorable comment, and the newspapers now comment very favorably. They say that the salaries of the legislators ought to be increased, and I cannot see any good reason at this particular time, Mr. Chairman, not to favor the Proposed Amendment. I am satisfied that, with our interests and the manufacturers' interests of this State, I am satisfied in my own mind there will be no trouble in passing the amendment, unless, as I said before, it is made in a way that the people favoring such a proposition would take no interest in it whatever. They say that in 1911, when that

Proposed Amendment was introduced, the candidates refused, on taking the platform, to advocate that increase for fear that they would lose votes. And that was true. I took part in the campaign in our district, and I called attention to speakers while they were addressing the assemblage to the fact that they ought to make mention of it, and they said that the reason they did not make mention of it was that they were the introducers, and they thought it unwise on the stump to make mention of it, and I believe that had some effect on the cause of its defeat. But all the manufacturing associations of the State, the press, and I have seen only one or two comments that did not speak favorably, all favor this. I don't think there would be any trouble, and I think the men ought to give some thought and interest to it. In conclusion, Mr. Chairman, let me say this: In the last twenty-five years I have been in the Assembly Chamber, year in and year out, and I was at the last Constitutional Convention and paid particular attention to its work and know something about it — while not being a delegate — I attended the work of the present commission relative to abolishing contract labor in the prisons, and some of the members here will remember, while I have not taken a prominent part, I have prepared some of the matter in connection with it, and from Rochester and some other cities I know some of the men after attending some years under the salaries which were paid, I don't want to mention the condition they remained in after retiring from that office. Working people not only lose their prestige, but many times cannot get a position back at their trade, and I know where they have been only too willing to take \$2 and \$2.50 a day jobs — I could mention even fifty in the last few years. They have never been heard of again. And here is another thing that actually happened. A man who has had the honor of being a member of the Assembly, when he has an "Honorable" attached to his name, believes it is not necessary to do anything else but fulfill that duty, and after the Legislature adjourns they become a gentleman for a month or two and then they are looking for nomination again, and they don't get it, and that is absolutely true as far as the workingman is concerned. I have seen them hanging around and they don't want to go back to work as a bricklayer or a moulder or a machinist after the Legislature has adjourned, and I trust, on behalf of the working people, Mr. Chairman, and the people of moderate circumstances in all localities, that the salary will be increased so that, if they may desire to become members of the Legislature, they may have that opportunity by at least taking care of themselves while here. I trust the Proposed Amendment prevails and will be adopted.

Mr. Green — Mr Chairman, gentlemen of the Committee of the Whole, I am not quite "twixt the devil and the deep blue sea,"

but I confess I am somewhat in a quandary as to the precise action I should take here in voting upon this question. In the first place I have had a thorough conference with the present Senator from my district and my Assemblyman from Broome county and they have each told me that as far as they are personally concerned they do not care for a raise in salary. One of them, and I guess perhaps both of them, can get along without any salary here. Now, on the other hand, I have been importuned by business men and professional men and practically all of the leaders of the laboring interests in my section to support this bill, the latter largely on account of the same suggestions made by the gentleman who preceded me — Mr. Curran, because at present they do not feel that they can be represented as they ought to be in the halls of the State Legislature; that they have not the means. Mr. Chairman, it was my proud honor to endeavor to represent my district in the Senate for a couple of terms and I know from my own experience that one cannot pull through and live as he ought to live on the salary; but I managed to get through somehow. I don't know, it may be the "cost of living high" instead of the "high cost of living" that affects most of the legislators when they cannot get through, but really, you and I have seen it, Mr. Chairman, when the session was so prolonged, that if you practiced the utmost economy, you could not pay your meagre bills for just bare living and traveling expenses on the salary of the Assembly and the Senate. I wish I knew how this constitutional proposition is going to the people. For one, I wish to take such action on all important questions presented here so that there will not be great danger of the ones in opposition to various things so that they will simply "bunch their hits" and stop the entire work of this Convention from becoming law. If this is to be voted for as a separate proposition in the constitutional revision going to the people, I will certainly feel that it is only proper and right to a large and representative class of our citizens and especially to the laboring interests, to give them an opportunity to express their opinion by ballot as to whether they wish the increase to be granted or not. I am not one of those who believe that all of the honesty and ability is contained within the coat of the man of millions. Nor do I believe that because a man is poor and a workingman, that that of itself means that he is beyond temptation or perfectly honest and more competent than the business or professional man to represent his constituents in the halls of the Legislature. But I do believe, that in the activities of our governmental affairs to-day, there should be an equal opportunity given to the poorest man, the man in the most humble circumstances, as well as to those who can afford to devote their

time without pay, in positions like Assemblyman or that of Senator. I am not going to find fault with the conditions which surround me nor sing that song, "How happy I would be if t'other dear lover were away," but I am going to vote my convictions here, and if I get a chance in some other place I will vote to give the lowest paid direct State representatives of the people a higher salary than they now receive; and if we are going to cut off on salaries, let us get out into some of the departments, and I don't refer to the judiciary departments, and lop off some of the salaries there, as the places are usually filled by men who can well afford to fill them if necessary, and they wish to, without any salary. Therefore, I favor the majority report of the Committee to increase the salaries of members of the State Legislature.

Mr. Vanderlyn — I wanted to ask the gentleman who introduced this bill as to what he means by this expression, "Their traveling expenses necessarily incurred and actually paid." Now I think that there should be something a little more definite in reference to this particular language. I think that there should be a certain mileage, so much a mile, or the mileage paid, or some language used that would express the exact meaning of this amendment. The words "their traveling expenses necessarily incurred and actually paid" appears to me to be a little indefinite, and I think it ought to be definitely stated as to what expenses shall be paid; whether it is the traveling expenses, whether it is the expenses that some of the gentlemen who have been discussing this bill referred to — they evidently have an idea that a man, in order to represent his constituents in the Assembly of the State of New York — that it is necessary for him to be located and board at the best hotel in the city of Albany. They have an idea, perhaps, that "traveling expenses" might mean that if he cannot arrive at his home on the day that he started from Albany to reach home, he must stop at some expensive hotel.

Mr. Brackett — Does the gentleman think there is any such thing as "the best hotel in Albany?"

Mr. Vanderlyn — If I were to express an opinion as to Saratoga, I would be very reticent about stating which I deemed the best hotel, but I assume that Senator Brackett always stops at the best hotel in Albany. But, to go back to the point in question, it is a very simple proposition. I don't mean to read to you a speech, and I don't mean to take up much of your time, but I think that it is reasonable and would be reasonable that a definite statement should be made as to what their traveling expenses necessarily incurred and actually paid are. Don't you think it would be reasonable to give them a mileage? Don't you think that they would be getting a reasonable compensation by giving mileage — if they were to get compensation for each week, then

it strikes me that mileage would be reasonable. I am informed by one of the gentlemen that I must have been out of the room, as another delegate has made the suggestion, and I did not know that it had been made. I did not know that any gentleman had made that suggestion before. Now, just one other point and then I am through. I am not one of the delegates in this Convention who is disposed to take up your time with unnecessary talk. I think the presiding officer and my associate delegates will bear me out in this: If I haven't anything to talk about, or if I haven't anything to suggest to the Convention, I don't want to take up the time, and had I known that an associate delegate had suggested this point, I would not have referred to it. But there is just one more thing that I want to say. I think the statement that one preceding speaker made that a member of the Assembly heretofore, or a member of the Assembly who attends upon the salary of \$1,500, must have money of his own or be a grafter, is a little strong. I have known men who have attended the Assembly of the State of New York in the past, who were men, honorable, upright men, men who had very little money; the only money they had was that which they earned by their own energy and their own work, and I can say as an expression, not only of my own opinion, but of neighbors of those men and of people who know them, that they were not grafters. I do not believe when we are discussing a question of this kind that it is necessary to go to the length of saying that members of the Assembly — members who have attended the Legislature in the past either had money of their own or were grafters, and I wish to resent on behalf of some of the best and the most honest men that I have known in my life an imputation of that kind. Now, in reference to the increase of salary, as we get to that point. If it is necessary for a man to live here in Albany properly, and if \$1,500 won't pay him, then increase the salary. As far as that point is concerned, I did not get up here to discuss that, but I would like to ask that some amendment to this bill be made making these words that I have referred to more definite.

Mr. Richards — For the information of the member who has just been speaking and referring to this language of traveling expenses necessarily incurred and actually paid I will say that it is a well-recognized phrase in the State finances. It represents exactly the mileage, or the railroad fare, and nothing more, and nothing can be construed as anything else, either by the State Comptroller or anybody else.

Mr. Marshall — I do not care to participate in any extended debate upon the subject that we are now dealing with, but I think it is important to call the attention of the members of the Convention to a matter of history which it is well for us to bear in mind

when we come to vote upon this proposal. In 1911 there was submitted to the vote of the people the amendment which was referred to by Mr. Curran. It was intended to increase the salaries of the Senators and the Assemblymen. That proposal was that the members of the Senate were to receive \$3,500, and the members of the Assembly \$2,000; and the members of each House were also to receive three cents for each mile that they should travel in coming to and returning from their place of meeting once a week during each week of actual attendance during the session. It is true that the salary of Senators was a thousand dollars more than is proposed in this amendment, and that of the Assemblymen was only \$500 more. The vote of the people upon that proposal may be quite significant. The favorable votes amounted to 262,490. The adverse votes amounted to 414,404. In other words, in a total of 676,894, there was a majority against the amendment of 151,914. That was only four years ago. It will also be interesting to know that six other amendments were presented to the people at the same election. All of them were rejected, but the majorities against, or rather, the votes against the amendment with regard to the increase of salaries were from 60,000 to 90,000 more than the votes that were cast against any of the other amendments which were passed upon by the people at that election. The question that I would like to ask is, whether a word to the wise may not be sufficient, as derived from the action of the people within the last four years upon what is practically the same proposition with which we are now dealing.

Mr. Lindsay — What proportion of the vote cast in that year was cast on this amendment?

Mr. Marshall — I assume from the fact that there were 676,000 votes cast and that the normal vote would be about 1,400,000, that about 50 per cent. of the vote cast at that election was cast on that particular amendment.

Mr. Lindsay — Do you think, under that circumstance, it is much of an indication as to the views of the people generally upon the proposition?

Mr. Marshall — I think it is a very excellent indication from the fact that I shall endeavor to show, when we come to discuss another Proposed Amendment here, that this particular vote in 1911 was much larger than the ordinary vote cast at elections, because the average vote on constitutional amendments is not more than 28 or 29 per cent. of all the votes that are cast at the same election for public officers.

Mr. Parsons — Mr. Marshall, will you give again the vote against the proposition?

Mr. Marshall — I have before me the Red Book of 1915 which states that the vote against the proposition was 414,404. I am

aware of the fact that — my attention has just been called to it — in the black book that you hold the vote given is 352,830, but I think it will be found that there is apparently an error in that publication because precisely the same vote is given with regard to some other amendments at the same election, and my opinion is that the figures in the Red Book are the accurate figures.

Mr. Byrne — What I was going to ask, Mr. Marshall, was, do you think that this amendment which was voted down — the fact that the legislators instigated it themselves in order to raise their own salaries would have any effect upon the vote?

Mr. Marshall — I cannot analyze the votes sufficiently to answer that question with any degree of intelligence.

Mr. Byrne — Don't you think it would have some effect if we should here seek to raise our own salaries?

Mr. Marshall — I think that the argument is not a very potent one because they themselves did not seek to raise their salaries but merely left it to the people to determine, and the amendment was not retroactive in its effect, but was merely prospective, and therefore I do not think there was much sentiment adverse to the Proposed Amendment because of the fact that it originated in the Legislature. Having made this statement of fact, I wish to supplement it by the suggestion that there has probably never been a better legislative body in the world than the English Parliament, and for centuries the members of Parliament were without salaries and performed their duties as patriotic men. It is also true that among the men who performed those duties in many instances were men of limited means. No man more distinguished than John Burns, the leader of the labor movement in England, the man to whom labor owes perhaps more than any other man in the world — he maintained himself as a member of Parliament, although he was a day-laborer. I call that fact to your attention merely as a significant one, which probably has not been forgotten by other members of the Convention; and, lastly, I merely wish to ask a question, and that is significant, in view of the fact that the compensation of members of the Constitutional Convention is, by Article XIV, made the same as that of members of the Legislature — whether, if the salary of members of the Constitutional Convention had been fixed at the sum of \$5,000, and that fact had been known — how many members of the present Convention would be here to answer to their names at the roll call? It is quite likely that that \$5,000 salary would have been considered a very delicious political plum, and men would have been here for the purpose of extracting that, rather than of performing their duties as members of this body for the sake of advancing the welfare of the State.

Mr. Tierney — I rise simply to call attention to the fact that members of Parliament for the last four years have received a salary, I think, £200 or £250. It is also a fact that Mr. Burns and others who built up the labor party in Parliament were supported by a purse raised by the labor unions.

Mr. Mereness — Mr. Chairman, I have the figures here which Mr. Marshall gave, for and against, and perhaps we may as well have the figures upon the vote on increasing the salary of the Governor. The Governor did not have anything to do with submitting that proposition to the people, so that the voters could not have re-sented anything the Governor did. The vote upon that proposition was, for the increase, 252,791; against, 376,755. I do not suppose that anything that we say will change anybody's vote here, but the spirit here seems to be to boost the salaries all along the line, and if that turns out to be a correct prophecy, I think we will find that the people of the State are very much more sensitive now on the subject of increasing salaries than they were four years ago. And I have seen some signs lately that even below the Bronx, where money is so plenty that you can almost find it rolling around in the streets, and where heretofore all propositions to increase salaries, to raise money by bonding or for any other purposes which would put money into circulation have always met with a favorable response from our beloved brethren of the great city — there are some signs now that even the galled jade down there is beginning to wince; that may be a good sign, and for the consolation of my brother Marshall and any other member who has the same viewpoint, if it should turn out that the work which we submit to the people is looked upon with disfavor by the people who have to pay for all of this increase, we can still console ourselves with the fact that we have the grand Constitution of 1894 still substantially intact.

Mr. Kirby — Mr. Chairman, it seems to be the policy of certain delegates to the Convention to vote for the increasing of salaries, the fixing of tenures, and the centralization of power. To my mind, it is a mistake and I want to say to you gentlemen that come from these various portions of this State where complaints are made that the people are already burdened with taxes, that it is not the time, at the present time, to submit to the people of this State a Constitution which is going to be loaded down with elements which, to the man who owns taxable property in this State, mean additional burdens. Already there is a direct tax against the property of the people of the State of New York, and there is no sign that in the future, that direct tax is to be abolished, or decreased; aye, rather, upon the contrary, there is every indication that the direct tax which is upon the property of the State is to be

increased. Will that be a popular measure to submit to the electorate of this State? My friend from Binghamton, in order to induce the passage, I suppose, of this amendment, suggests a separate submission to the people. But, my fellow delegates, I want to say to you that this argument that has been urged before this Committee, of which I have the honor to be a member, and as such join in the minority report here, that higher salaries attract a better class of men to the public service, is an exploded theory. It only attracts more candidates for the various jobs, and that is the only result so far that experience has demonstrated. I want to say to you men now that the great services that have been rendered in the constructive statesmanship and legislation of this State have been rendered by men who would serve for the present salary and for less than the present salary. I do not know of any greater man in the early history of the State than he who was the Speaker of the Assembly and President pro tem. of the Senate, the late Edmund L. Pitts, who came from the district where I reside. I do not know any man who gave a greater benefit to the public service and served at the present salary than the distinguished Colonel Timothy E. Ellsworth, who represented the Forty-seventh District. I look around this body and I see here men now who are distinguished in the service of this State, working at this salary. There are plenty of men, gentlemen of this Convention, in the various localities of this State who would be delighted to serve at the present salary, if they had the opportunity. I hope that the report of the majority will not prevail. It ought not to prevail, gentlemen, at this time. With your State debt increasing in the past ten years by the millions and with the end nowhere in sight, it is not the time to go before the people upon propositions, such as I indicated in my opening statement, increasing salaries and securing tenure in office and taking away from the people the right and the power to run their own affairs.

Mr. Curran — I am quite surprised. I wish I could address this Convention with the eloquence of my friend Kirby in calling attention to the late Senator Pitts. I wish to state that I know something about Senator Pitts, and I know something about the time that Senator Pitts ran for office, and Senator Pitts spent more money when he ran for Senator than would pay the salaries of fifty delegates to this Convention, at this time, and I was in the same county.

Mr. Kirby — You are the first man in the Forty-ninth District that I ever heard indicate that Senator Pitts spent any such amount of money or possessed a disposition to spend it.

Mr. Curran — For the benefit of Delegate Kirby I will say that I was interested in the campaign —

The Chairman — Confine yourself to the issues.

Mr. Curran — Well, he is calling attention to the fact that he was elected on the proposition of a small salary. Am I within my rights in calling attention to the fact that some men can afford to occupy such a position without salary, and Senator Pitts could so afford? I have no objection if you defeat this amendment; none whatever. I am not a candidate for member of Assembly. It seems to me that the position that I have occupied for the last four or five years, advocating the increase, should at least be taken into consideration. Now we hear here that politics has nothing to do with this Convention, and that men who are elected — somebody came from Heaven and put them on the ticket, and that it is God in themselves who sends them here. Well, I want to say that while I am a Republican, I believe in organization in its strictest sense, not only from a political point of view, but from every other point of view, and I would not deny the fact that I am a member of a political organization and I do not come here to try to inform the delegates to this Convention that I merely dropped out of the skies and was landed in here without any influence whatever. I appreciate the fact that I had the honor of being placed upon the ticket, and I am only waiting for the opportunity, Mr. Chairman, to do something in return for those who were favorable to my selection as a member of this Convention. I hear talk of log-rolling. I see more log-rolling here than I ever saw before in my life. Let me tell you, gentlemen, that the trouble with the log-rolling is that the log happens to roll over on your leg and you don't like it. You are here in little groups. What for? To try to further your interests, just the same as I or others and I want to say to you that I do not disapprove of that fact. I do not care how bitterly you oppose or resent any proposition that I may present, but I do not want any ill-feeling, and I do not care how bitterly you attack me, I have no resentment. I am going to try in the best possible way to defend my own proposition. It is not my own proposition. It is the proposition of the working people of the State of New York, and I insist, when we come to think of the manufacturers and the chambers of commerce, who have their propositions that it is no more than fair that this Convention ought to adopt this proposition. Now, Mr. Marshall calls attention to the constitutional history and as to what happened in 1894. Well, this is 1915. There has been quite a change since 1894. Reference has been made to the vote by the representatives in Parliament. I refer you to the fact that members who have represented trade organizations in Parliament nearly starved, and that it is a fact that the trade organizations got together and paid the salaries of their members, and they pay the salaries now in the House of Parliament; members

representing the labor organizations have their salaries paid by the organizations so that they will have the honor of being represented. So, that time has gone by over there, and the same condition may present itself here. If you believe the salary is great enough — I know you don't. I know in my heart that the members of this Convention realize that \$1,500 is not adequate salary for members of the Senate and Assembly. You might have one or two, for some reasons or other, believe they could afford to come here and live whether they made anything or not; they probably think that they could live on a smaller salary. Now I believe, gentlemen, that at least this thing ought to have a thorough airing. There are two or three bills. I don't want to be considered as the man who has introduced the amendment to increase salaries. I believe if I am not mistaken that Brother Smith introduced an amendment to increase salaries. I believe that Mr. Tuck introduced an amendment; and I believe that the amendment I introduced is for more salary, \$3,500 a year; and the reason we did not make any distinction between the Senate and Assembly was this: That your previous Constitutions did not make any distinction and that from our experience in 1911 or 1913 — 1911 I believe it was — that the differences between the Senators and Assemblymen, the difference in salaries, had a great deal to do with defeating that proposition. At least, we think that accounts for the number of votes cast against it, but we think that \$1,500 or \$2,500 or \$3,000, with the Senate and Assembly receiving the same compensation, each member of each House receiving the same compensation would not stir up any bitter feeling or any antagonism against the proposition, providing it was passed by this Convention, and I certainly believe there is some logic in that. We also believe they are well entitled to receive a fair salary, and as one of the men who have addressed the Convention on this proposition, I wish to make the statement that we are here for the purpose of amending the Constitution in this respect, and I want to say as a member of a trade organization for thirty years, that I think I am just as conservative as any man here. There is not a man here who has not interests, personal interests and other interests. Take the lawyers. One hundred and thirty lawyers in this Convention. Let us be frank with ourselves. I suppose you are not looking out for the State Bar Association and the man who is practicing that particular profession. You have an organization and I cannot break into it. I cannot get in because I am not a professional man and I don't want to be in it. But you talk about things you propose. About everything that has been proposed here has been proposed either through the Bar Association or through the judges of the courts, and they have

a perfect right to do it. I am not going to make any objection to anything they propose here, that is, their right to propose. They have a right, and they are men of learning and training, and they have intelligence and I want to go as far as I can in following them.

Mr. Westwood — Some reference has been made to the vote four years ago when a similar proposition was submitted to the people?

Mr. Curran — Yes.

Mr. Westwood — And I would like to ask whether you know whether or not the labor organizations at that time gave expression as to their approval or disapproval of that measure.

Mr. Curran — I think, for the benefit of the delegate, that the resolution that I introduced at Oswego stated that we favored the amendment, that we mentioned the amendment, and that all trade organizations in the State of New York should be notified of the fact and do what was possible to support that amendment. That was in September. But it was not the laboring people that defeated that proposition. Everybody else was against it. They said the Assemblymen increased their own salaries and members of the Legislature who were running that fall refused to take a stand when they were campaigning in favor of the proposition.

Mr. A. E. Smith — I just want to answer the question about the 1911 submission of the Proposed Amendment to increase the salaries of the legislators. It must be remembered that with that amendment there was submitted six other amendments, and the only explanation that can ever be given of the attitude of the people that fall on the question of constitutional amendment — the only explanation that can ever be given would be to say that for some unknown reason that nobody will ever be able to explain the people were opposed to all amendments to the Constitution, and I will show you that that must be so. With the seven amendments to the Constitution there was submitted a proposition to bond the State for \$21,000,000 for the canal terminal. One of the Proposed Amendments which went down to defeat with the amendment to increase the salaries for the legislators had for its purpose to safeguard the expenditure of that \$21,000,000 by amending the Constitution to make less cumbersome and less costly condemnation proceedings. There was also submitted a Proposed Constitutional Amendment to permit the State to dispose of its unused canal lands. When the Constitution was amended to prevent the Legislature from disposing of the canal lands, nobody had in mind the enlarged canals, and when the engineering difficulties encountered in connection with West Canada creek and the Mohawk river made necessary the changing of the

bed of the canal, the State found itself with a lot of canal lands on its hands that were absolutely worthless, and when the State asked the people that fall for permission to dispose of them, the people said "No; keep them, away;" and when they asked that the Constitution be so amended that condemnation proceedings could be made less costly to the taxpayers, they said "No; let it stay the way it is;" and at the same time they voted to bond the State for the \$21,000,000. You cannot go by the action of the people in 1911. They apparently did not study any of the constitutional amendments that year, because every one of them went down to defeat. Now, gentlemen, on this question of the salaries of the members of the Legislature, there is no sentiment about it. It is pure business. It is the business of the people of the State of New York that we are here to transact, and we should deal with it in the way we deal with any other business proposition. In the twenty years that the Constitution has remained as it now is, the tendency in this State has been towards larger salaries; larger salaries for the officials, and larger salaries for all the subordinates, and year after year the heads of the different departments, particularly the departments of banking and insurance, come before the Finance Committees of both Houses and ask for increases in salaries for certain individuals in their departments in order that the State may be able to retain their services. As soon as they become in any way expert, insurance companies and banking institutions and corporations all over the State reach out for them and take them away from the State, and the State has to be continually training new hands in its business, simply because they are tied down by appropriation bills for a year at a time, and now we propose to tie the State down for a long while to come on the question of salaries for members of the Legislature. Now, let us see where this \$1,500 salary came from. It was not an arbitrary figure. That was based on \$15 a day for a hundred day session, twenty years ago. What has happened? Twenty years ago the business of this State was comparatively small; by comparison with to-day it was hardly anything. Appropriation bills did not run over \$12,000,000 or \$14,000,000 a year and now it is \$65,000,000 a year. Activities of the government, matters of attention for the Legislature, never thought of twenty years ago, occupy the time and attention of the men of to-day. What session of the Legislature in the past twelve years has finished in 100 days? Just one. The session of 1912. The fact of the matter is for the last eight years the Legislature has been in session pretty nearly on an average of a little over one-half a year, and the Legislative Law provided that \$300 of the legislator's salary shall be held back until the final day of adjournment. I don't

know what the framers of that statute had in mind, unless it was that they wanted to prevent them from becoming a charge on the city of Albany at the end of the session; but in 1911, when that session extended into the 23d day of July, it was necessary here in this room and in the Senate to amend the Legislative Law in order that some of the members might go out and get some part of that \$300 to keep themselves alive. Now, we have direct primaries. Twenty years ago a man was nominated on the 15th or 16th of October, and he was running for member of Assembly about two weeks and a half or three weeks at the most. Now, he is nominated some time in the middle of August, and he has to travel around in his district and attend the county fair, and attend the different taxpayers' meetings and the Hop Growers' Reunion. That is the difference. It has become an all year job, and as soon as he is elected in November he wants to begin and prepare himself for the 1st of January to take up his duties. There is another thing about it that is more important than what I have just mentioned and that is this: We must remember that a great many people in this State attach dignity to an office in proportion to the salary, and I think that the ridiculously small salary of the State Senators and the Members of the Assembly has unquestionably gone a long ways in the minds of a great many people to make them think that it is not such an awful job after all. I remember the member from Richmond county, Mr. Short, telling a story before the Committee when this matter was under discussion. A man down in Staten Island walked up to him and said: "Well, Bill, you have been re-elected to the Assembly." He says, "Yes, I am going back again." "Well," the man said, "It is pretty near time you got a better job." He says, "Well, what, for instance?" "Well," the fellow said, "Coroner." There was a man that attached importance to the job in accordance to the salary. The coroner got \$4,000 a year and the member of Assembly got \$1,500. Why, it is rumored about here that in long sessions of the Legislature the committee clerks, and I believe in one or two years some of the messengers, received more salaries than the members of the Legislature.

Mr. Schurman — I should like to ask whether in the opinion of the speaker the office would be dignified more by doubling the length of term and by doubling the salary, and I ask the question because my impression is that the coroner has a four-year term.

Mr. A. E. Smith — Well, I believe that it would be, if the term was lengthened, but I don't think the people of the State are ready to do that. I think they want to have the say once a year on at least one branch of the Legislature.

Mr. Wadsworth — There are only three States at the present moment which have one-year terms for their Assemblymen; New

York, New Jersey and Massachusetts. All the other States of the Union have two years for their members.

Mr. A. E. Smith — That may be so. I say now there is a great deal to the contention that a man should have a two-year term in this body, because unquestionably no matter how able he may be, he cannot possibly understand the rules of this body in one year. I will subscribe to that; but at the same time I say that the sentiment, as I understand it, and as I am able to gather it, is against the extension of the term for members of the Assembly. Now, I don't know that there is anything more that I can say about this matter. I believe it is a matter of business. I believe that the State owes it to the members of the Legislature to give them more salary than they are receiving. It is not adequate. There is a great impression throughout the State that the carfare of members of the Legislature is paid for by the State, because it says "mileage." The fact of the matter is, and few people understand it — you receive the mileage only at the rate of ten cents a mile, so a man coming from the city of Greater New York to the Assembly or the Senate, for his total mileage, during the entire session of the Legislature receives \$30. Now, if you did not go any farther, you should at least pay his expenses. Away back when we fixed the \$1,500 salary, a man did not go home. But with our up-to-date railroad traveling accommodations, a man thinks nothing of running down to New York or running up to Buffalo on Thursday or Friday and coming back here again on Monday. It is all out of his own pocket. If he is a married man he has to keep his home going in the county he represents, and he has to live in a fairly respectable condition up here. He might economize on certain things, but he cannot afford to be seen coming out of the Essex lunch.

Mr. Westwood — Does he likewise appreciate that a member of the Legislature coming from the supreme county of the State to Albany is compelled to pay for transportation a similar amount, if not more?

Mr. A. E. Smith — Supreme county?

Mr. Westwood — I refer, of course, to the county of Chautauqua, refusing to take second place, or to yield any place of superiority to the county of Saratoga.

Mr. Brackett — I am not going to inquire as to whether the speaker does recognize any such supremacy on the part of Chautauqua over Saratoga, but the question I was going to ask when I arose was this: Doesn't he think that this provision which permits mileage each week would greatly aggravate the situation which is already as aggravating as it ought to be to any human being, especially to Mr. Quigg, the attendance on Fridays and Saturdays.

Mr. A. E. Smith — I will say that nothing probably could be done that would go farther toward insuring the attendance of the members every week than to have that mileage paid for as actually expended by them, the way the proposal reads. That would help to bring them here and it would give the constituencies of the different parts of the State an opportunity to know just how many weeks out of the session they were not here, because the Comptroller's report will show the weeks that they drew no mileage. I think that is very necessary. The presiding officer of this House and the majority leader, and the majority have it within their power to punish the members for a failure to attend to their duties, but that has never happened. What can you say to a man? A man will come to the Speaker and say I want to go home to-day. I have got a little business in my home town and I must attend to it. You cannot say, you must stay here. He will say I never thought this was the way it would work out, or I would not have come here. This interferes with my business. This \$1,500 is of no use to me, and I have got to go home. If he is brought before the bar of the House and makes a reasonable explanation somebody will move to excuse him and it will be unanimously carried. And the only way you can get the business done and have a majority here is by begging the men to be present. The responsible persons in the Legislature beg members to come here and stay in their seats and do the business of the State of New York. No doubt about it. Every man who has ever been Speaker has experienced the same difficulty in having a majority here in order to carry on the business of the Assembly. I say it is a matter of business on the part of the State of New York to recognize the services in a better way than at the rate of \$1,500 a year. It would be a great deal better to have it nothing because \$1,500 means nothing. It may have meant something twenty years ago; it may have meant something when there was only a hundred day session; but to-day it means nothing.

The Chairman — Is there any formal motion to be made?

Mr. Lindsay — I move that when the Committee rise it report on Print No. 741, General Order No. 17, recommending its passage.

The Chairman — The question is on the motion by Mr. Lindsay to report favorably General Order No. 17.

Mr. Tuck — Is an amendment in order at this time?

The Chairman — Yes.

Mr. Tuck — I introduced a similar proposition, but I am in favor of this one, except I would like to see the word "traveling" defined more definitely and I will, therefore, move to amend the amendment on line 6, by striking out the word "traveling"

and substituting therefor "transportation;" and in line 9, to insert after the word "each" the word "two," so that the transportation expenses shall be allowed once in each two weeks.

The Chairman — The Clerk will read the proposed amendment.

The Secretary — Line 6, page 1, strike out the word "traveling" and substitute therefor the word "transportation." On line 9, page 1, after the word "each" insert the word "two."

Mr. Latson — As the author of one of the bills that was introduced to accomplish this purpose, I wish to express the view that I think this bill is meritorious. I think it was in better form before the proposed amendment was offered, than it would be if it is amended, and I speak for the bill in its original form. There is a danger, Mr. Chairman, it seems to me, that we may confuse the issue as it is presented before us this afternoon. If we were dealing with the question as to whether or not our legislators should hold an honorary position or be compensated for their services, much that has been said would be relevant to such an issue. I apprehend, Mr. Chairman, that that is not the question before this House. Our legislators are deemed to be paid. They are not deemed to hold purely honorary positions. Everything that has been said to us this afternoon indicates that they are underpaid. It seems to me, Mr. Chairman, that we have simply but to face the final question. If it be the policy of the State of New York to pay its legislators, and if it appears that these legislators are not deemed properly paid, is there any reason why they should not be properly compensated for the services rendered to the State? I am one of those men, Mr. Chairman, who feel that our public officials generally are underpaid. I should like to see the Attorney-General of this State receive the compensation which would be consistent with the service, the great and important service, he renders to this community. I am one who would like to see our bench properly compensated, and not paid a mere honorarium, and so here, as we approach this proposition with reference to our legislators, I submit that we should pay them properly, for the service which they render the State and which this State exacts from them. The measure should receive our approval, Mr. Chairman.

The Chairman — The question is on the amendment offered by Mr. Tuck. All in favor of the amendment will please say Aye.

Mr. Westwood — I would like to ask for a division on that. I am willing to vote for the word "transportation" instead of "traveling," but I am not willing to vote for every two weeks instead of every week.

Mr. Tuck — Mr. Chairman, I withdraw the second part of the Proposed Amendment and will leave it stand as to the first part thereof.

The Chairman — The last part of the Proposed Amendment is withdrawn.

The Clerk will read the amendment as it is now proposed.

The Secretary — Page 1, line 6, strike out the word "traveling" and insert in place thereof the word "transportation."

Mr. Tuck — The purpose of introducing that is to make certain that it covers the expense of transportation and nothing else.

The Chairman — I think the Committee is well enough informed.

Mr. Lindsay — I hope the amendment will not prevail for this reason. The expression used is the usual expression when the State has provided for the salary and necessary expenses, necessary traveling expenses. As stated by Delegate Richards, the expression that is used here is the common expression, and is well known in the State. Now, if any one will tell me the difference between "transportation expenses" and "traveling expenses," I might be perhaps induced to accept it, but for the life of me, I cannot see the difference. Your "traveling expenses" are "transportation expenses." "Transportation" is "traveling" and "traveling" is "transportation," and there is substantially no difference, and they are the same, and the words here used are those usually used when expenses are paid in connection with salaries.

The Chairman — The question is on the amendment proposed by Mr. Tuck. Those in favor of that motion say Aye, opposed No. The Noes seem to have it.

Mr. Deyo — I move to strike out the words "five hundred" in line 4.

The Chairman — Mr. Deyo moves that the words "five hundred" be stricken out on line 4.

The Chairman — The question is on the report of the Committee to the Convention.

The Chairman — The question is on the motion by Mr. Deyo. The Clerk will state what the motion is, that we may all understand it.

The Secretary — It is moved to amend on page 1, line 4, by striking out the words "five hundred"?

The Chairman — All in favor of the motion offered by Mr. Deyo please say Aye, opposed No. The motion is lost.

The question is now on the favorable report of the amendment.

The Chairman — General Order No. 17. A rising vote is asked for. Those in favor will please stand. The gentlemen will be seated. Those opposed will please rise. The Clerk will announce the result.

The Secretary — Ayes, 97: Noes, 18.

The Chairman — It is carried. The next order of business.

The Secretary — No. 744, General Order No. 20, by Mr. R. B. Smith.

Mr. R. B. Smith — Mr. Chairman, this amendment is designed to make clear and definite the succession to the office of Governor. It is a corollary or companion to the amendment already ordered to third reading providing for the succession to the office of lieutenant-governor. The two amendments go together and should both be disposed of practically at the same time, or at least in the same way. The language used with reference to the succession of office of Governor is the same as that used in the other amendment and the purpose and plan as I stated before are precisely the same. Minor amendments as to language were made by the Committee in contemplation of the possibility of the term of the Governor being extended to four years. These changes do not, however, necessarily affect the amendment itself, but makes necessary a change in language to conform with the purpose of the amendment for an extended term of the Governor. The Committee finally brought out this bill No. 744.

The Chairman — The Chair assumes the usual motion is made.

Mr. R. B. Smith — Yes, I make the usual motion.

The Chairman — Those in favor will say Aye, opposed No. It is carried.

Mr. Marshall — I ask Mr. Chairman of the Judiciary Committee whether we will adjourn at five o'clock.

Mr. Wickersham — Yes, under the rule which we adopted a few days ago, the session closes at five o'clock.

The Secretary — No. 769, General Orders No. 43, by the Committee on Relations to Indians.

Mr. Lindsay — Mr. Chairman, there are some statements that I might make. We are fortunate, the Committee on Relations to the Indians, that our amendment does not depend on the report to be made by any other committee, that we can take this matter up as an independent proposition and dispose of it. The Committee is also fortunate in having as its members a number of persons who are very familiar with the Indian question in the State of New York. One of our members was the author of the report on that question in 1889, Mr. Whipple, which is a standard referred to by the courts and others on the proposition of the status of the Indians and of their rights and of their title in the State of New York. Another member of the Committee was counsel for the second investigation, the investigating committee in 1905, which reported in 1906. Other members of the Committee reside in or about reservations and are familiar with the

conditions of the Indians and their needs. In order that I may not find it necessary to cover some ground which has been covered already by the report of the Committee, I should like to call the attention of the members to the report of the Committee, document 26, I think it is, to which there is appended a brief statement covering the law of this State in regard to Indians, in regard to their rights and especially the condition of the tribal lands of the Indians in this State. If I should state or if the papers of this State should publish to-morrow that there were at least 2,500 inhabitants of the State to whom the laws of the State do not apply, and over whom the courts of this State have no jurisdiction as to the questions of marriage, divorce, annulment, bastardy and a number of other such crimes, practically civil crimes, it would be doubted. If I should state further that in the State of New York there is a divorce court which is the most liberal divorce court not only in the United States but in any civilized nation, you would probably be horrified, and yet that is the exact conditions that this State has imposed upon a portion of the Indians within its borders. They have provided by law that the Indians on the Cattaraugus and Allegany Reservations have complete control of marriage and divorce to the exclusion of the courts of the State of New York, and that is exercised every day. Now, one difficulty in regard to the enactment of laws in this State seems to be the attitude of the people generally as to what rights the Indians have in their property, and what control the State of New York or the United States has over them. When it comes before them, they dismiss the proposition simply because of this difficulty, and because apparently they do not care to go into the subject. Every commission that has been appointed by the State of New York, every commission that has been appointed by the United States, to look into the matter of the Indians in this State, every body that has created a commission or made an investigation of the Indians of this State, has agreed upon the proposition that the courts that are in force among the two tribes of Indians, on two reservations, are not only corrupt, but that they are composed of persons, as a rule, who are ignorant and can scarcely read and write. The general laws, the laws which we have made for our Indians, in many respects are not as liberal or as good laws as were made a hundred years ago by the State of New York for the Indians. The laws by which we are governing them at this time,—and there are nearly six thousand of them in the State, probably fully that—have practically existed and were passed between 1813 and 1839, except that in 1859 the exclusive control of marriage and divorce was conferred on two reservations only

in the State. That is to say, the Seneca Indians upon the Allegany Reservation and upon the Cattaraugus Reservation have absolute control of marriage and divorce, and no other Indians in the State of New York have that right, and the State has absolutely no power to interfere by appeal or otherwise on the question of divorce. Divorces are granted down there; a woman is thrown out upon the world with possibly three or four children and she has no right of appeal to the courts of this State, and this State recognizes that as a legal divorce. Now, I want to call your attention to this because upon investigation, I feel very earnestly in favor of something being done. Here is an actual divorce proceeding of these courts as reported in this Whipple report. The law says that there shall be peacemakers on all reservations, the Tonawanda, the Allegany and the Cattaraugus, but they don't give any peacemakers or any courts to any other set of Indians in the State. They then provide that any two peacemakers may act. They then confer upon these peacemakers absolute power over marriage and divorce. Now, here is a divorce; and I may say there is no particular change since that date:

"TOWN OF CARROLLTON, CATTARAUGUS COUNTY, N. Y.

"December 14, 1887.

"To the Peacemakers' Court of the Seneca Nation of New York Indians upon the Allegany Reservation:

"This is to certify that I have consented and agreed to grant a bill of divorce to George Gordon, and live separate and apart from each other during our natural life. And I consent and hereby pray to the said peacemakers' court to grant a bill of divorcement without delay.

her
"LUCY X GORDON.
mark

"Witnesses:

"ALFRED JIMESON,

"M. F. TRIPPE."

"THE DECREE.

"PEACEMAKERS' COURT.

"Held at the Residence of David B. Jameson on the 15th day of December, 1887.

"After hearing and reading the petition of Lucy Gordon, the court ordered to grant a bill of divorce George Gordon.

"(Signed) DAVID B. JIMESON,
JOHN LAMPSON,

"Peacemakers for the Seneca Nation of New York Indians upon the Allegany Reservation, N. Y."

Then there was a question put to this Indian court:

“Q. Is that also a portion of the record of the proceedings before the peacemakers’ court, in this book? A. Yes, sir.”

“SEPARATE CERTIFICATE.

“JAMESTOWN, CATTARAUGUS COUNTY, N. Y.

“June 1, 1886.

“On the first day of June before us personally came David Jameson, Jr., husband of Amanda, described in the within conveyance; the said David Jameson, being and known to us to be the individual described in and who executed the said conveyance, and he acknowledged, on private examination, that Amanda had two childs who were not belonging to the said David Jameson, Jr. That he executed the same freely, without any fear or compulsion of her.

“(Signed) DAVID JIMESON, JR.,
his
JOHN X LAMPSON,
mark

“Peacemakers’ Court.”

To show that there has not been much improvement, I have here a communication which was sent to the President of this Convention —

Mr. Wickersham — The hour fixed by the rules for the expiration of the afternoon session is approaching and if the delegate has no objection, I will move that the Committee do now arise, report progress, and ask leave to sit again to-morrow in continuance of this discussion.

Mr. Bunce — Mr. Chairman, why should not the motion be to report favorably?

Mr. Wickersham — I am not ready to report favorably because there may be some more discussion.

Mr. Bunce — I do not believe there will be.

Mr. Curran — May I rise to a question of personal privilege, just for a moment? I would like to have erased from the minutes — I am not unmindful of the dignity of this body, and I would like to have erased from the minutes the statement that I have made relative to the late Senator Pitts.

The Chairman — Without objection, that will be done.

Mr. Bunce — I would like to amend my leader’s motion that the Committee rise and report favorably on the proposition of the Committee on Relations to the Indians.

Mr. Wickersham — I think that some of us who are interested in this measure are not quite willing to vote favorably on it this afternoon. We have simply heard the presentation of the Chairman of the Committee. I trust that the motion will not prevail.

Mr. Bunce — The report of this Committee has been printed in the Journal and in the Record and the brief of Mr. Lindsay has been printed as a document at my suggestion, and everybody has had an opportunity to read it.

The Chairman — The hour is fixed, and the motion made by Mr. Wickersham is that the Committee rise and report progress on the proposition Mr. Lindsay is now discussing. All in favor of that motion will say Aye, opposed No. Carried.

(The President resumes the Chair.)

Mr. F. L. Young — The Committee of the Whole presents the following report.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 756, introductory No. 679, by the Committee on Taxation, and No. 769, introductory No. 707, by the Committee on Relations to the Indians, reports progress thereon and asks leave to sit again.

The President — The question is on granting leave to sit again. All in favor of granting leave will say Aye, contrary No. The Ayes have it and the leave is granted.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 741, introductory No. 697, by the Committee on Legislative Organization, and No. 744, introductory No. 385, by Mr. R. B. Smith, reported in favor of the passage of the Proposed Amendments.

Mr. Brackett — With respect to the bill relating to the compensation of members of the Legislature, the one offered or presented — the report presented by the Committee on Legislative Organization — I move to disagree with the report. I do this, Mr. President, not for the purpose of taking time, nor even for calling for a roll call, but I do it, bearing in mind that there is no record made of the vote in the Committee of the Whole — I do it for the purpose of being allowed to ask the Convention that my name may be recorded on a roll call, and it may be a quick roll call, as against the bill, and that any of my colleagues who desire to be thus recorded may also ask that their names be recorded.

Mr. Wagner — Mr. President, I would suggest to the delegate that he does not need to be unduly apprehensive about that. There will be a roll call upon the final disposition of the proposal, and he will have an opportunity to be recorded in the negative.

Mr. Brackett — That comes after revision.

The President — The delegate can call for a roll call upon the question of agreeing to the Committee report.

Mr. Brackett — I do not want to take the time, Mr. President, to have a roll call. I am willing to have a quick roll call or anything by which I may make a record that I am opposed to the bill.

Mr. Westwood — Mr. President, I desire to raise the point of order that the motion of Senator Brackett to disagree with the report is not in order for the reason that the question automatically arises upon the report of the Committee, shall the Convention agree with the report of the Committee, and the motion, therefore, to disagree is simply a negative statement of the pending question and is therefore out of order. He or any other member may, under rule 33, debate, or, as I understand it, demand a roll call, but I raise the point of order so that we will not later become involved in inconsistencies.

Mr. Brackett — I think a motion to disagree with a report of the Committee of the Whole is always in order. I have no wish to hold the Convention here after its hour, and in order not to do that I am willing that that motion should lie on the table.

Mr. Wagner — I rise to a point of inquiry, whether or not that would not keep the whole subject matter, and therefore the bill, upon the table.

Mr. Brackett — It can be brought up at any time, on anybody's call.

Mr. Green — May I inquire if the object could be accomplished by unanimous consent of the Convention, as well as that of the Chair, to allow those who wish to go on that roll of honor to announce their names and let them become public?

The President — The Chair thinks that the question is upon agreeing to the report of the Committee, and it is not competent to substitute for that a motion to disagree with the report of the Committee simply. To disagree and recommit or to disagree and commit with instructions would be competent, but the question under the rules is, will the Convention agree to the report of the Committee? The Chair does not think it is competent to simply reverse that and make it a motion to disagree.

Mr. Brackett — Mr. President, bearing in mind that the only object of rules is to accomplish the will of the body, while I want to state that I think the learned President is wrong on it, because it has been the custom of the years and always — the way to make a record in the Senate when the Committee of the Whole reports is to move to disagree, and upon that motion a roll call is taken — I still do not even except to the ruling of the Chair, but I only want to, and I presume from what has been said it is already accomplished — I want it understood thoroughly where a record

is made, as it is in the Senate, and not in the Committee, that I am entirely and completely and unalterably and for all the present Convention opposed to any increase of legislative salaries; and I want, if any colleague of mine feels the same way, to have that record made for him as well.

Mr. Dunmore — I desire to be recorded in the negative.

The President — Does any delegate ask for a roll call upon agreeing to the report of the Committee?

Mr. Bunce — Mr. Chairman, I think we ought to have a roll call. I desire to be recorded.

Mr. Mereness — Mr. President, is there not a rule which provides that a roll call can be had on such a proposition as this on the request of fifteen members?

The President — There is. If a roll call is demanded and the motion is seconded by fifteen members, the roll should be called. A roll call upon the question of agreeing to the report of the Committee is asked. Those in favor of seconding the call will rise and remain standing in their places until counted. There is a sufficient number up. The Secretary will call the roll upon the question of agreeing to the report of the Committee in favor of increasing salaries. A vote Aye will be in favor of the increase. A vote No will be in opposition to the increase.

Mr. Curran — Mr. President, may I ask what is the time for adjournment?

The President — I beg your pardon?

Mr. Curran — Is the time limit for adjournment five o'clock?

The President — No, half-past five.

Mr. Wickersham — Mr. President, I rise to a point of order. I call the Chair's attention to the fact that an error was made as to the hour fixed for the adjournment of the Convention. The Chair was in error in recollecting it as 5:30. The Record on page 1021 shows that the rule adopted was that the Convention should meet from 2:30 to 5 p. m. The hour of 5 having arrived and passed, I suggest that it is not now in order to proceed with the business of the Convention.

Mr. Brackett — Mr. President, I rise to a point of order: That in a roll call, no business is in order except the roll call.

The President — The Chair is of the opinion that when a roll call has begun before the time fixed for adjournment, it must be concluded. At the conclusion of the roll call the Convention will adjourn automatically.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Angell, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bernstein, Blauvelt, Boekes, Brenner, Bunce, Burkan, Buxbaum, Byrne, Cobb, Coles, Curran, Dahm, Daly, Dennis, Dick, Donnelly, Dooling, Doughty, Dykman, Eisner, Endres,

Eppig, Fobes, Frank, Green, Greff, Haffen, Jones, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Martin, F., Mathewson, Mealy, Mulry, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Parker, Parmenter, Parsons, Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, R. B., Smith, T. F., Stanchfield, Standart, Stimson, Stowell, Tanner, Tuck, Unger, Van Ness, Wagner, Ward, Webber, C. A., Westwood, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, F. L.

Those who voted in the negative were: Allen, F. C., Barnes, Berri, Betts, Brackett, Cullinan, Deyo, Dunlap, Dunmore, Ford, Hale, Johnson, Kirby, Marshall, Martin, L. M., Meigs, Mereness, Ostrander, Pelletreau, Schurman, Smith, E. N., Steinbrink, Wadsworth, Young, C. H., President.

When Mr. Schurman's name was called he said: Mr. President, I ask to be excused from voting. I do so on the ground that while I consider the present salary received by Assemblymen and Senators too low, there is in the country a very strong sentiment against raising salaries of legislators and State officials, a tendency undoubtedly emphasized by the economic depression from which we are now suffering, and because I fear if this motion prevails and this Proposed Amendment is incorporated in our proposed new Constitution, it may drag it down to defeat.

Having given that explanation I beg to vote No.

When Mr. Barnes's name was called he said: Mr. President, I ask to be excused and will briefly state my reasons.

I believe with Dr. Schurman that the adoption of this proposal is one of the most unwise things that could possibly be done by this Convention.

I withdraw my excuse and vote No.

When Mr. Cullinan's name was called he said: I desire to be excused from voting and will briefly give my reasons. I desire to say that my reasons are substantially the same as those advanced by Dr. Schurman. I do not think that this is a year when we should increase any salaries. I desire to withdraw my request and vote No.

The President — The question before the Convention is shall Senator Wagner be excused from voting.

Mr. Wagner — Mr. President, unless I can secure unanimous consent, I will be recorded upon the proposition.

The President — The Secretary will call the name of Mr. Wagner.

The Secretary — Mr. Wagner.

Mr. Wagner — I vote in the affirmative.

The President — The Secretary will announce the result.

The Secretary — Ayes 105; Noes 25.

The President — The Convention having voted to agree to the report of the Committee, the Proposed Amendment to the Constitution will be referred to the Committee on Revision.

Mr. Wickersham — I move to reconsider the vote and I suggest that the motion lie upon the table.

Mr. Wagner — I ask for an immediate roll call upon that motion, inasmuch as the motion keeps the whole subject matter upon the table, and I think that is an unfair disposition.

Mr. Sheehan — Mr. President, I rise to a point of order.

The President — The gentleman will please state his point of order.

Mr. Sheehan — The point of order is that the hour of 5 o'clock having arrived no other motion can be entertained.

The President — The point of order is well taken. The hour of adjournment fixed by resolution of the Convention having arrived, the Convention stands adjourned until 10 o'clock to-morrow morning.

Whereupon, at 5:25 p. m., the Convention adjourned to meet at 10 o'clock, a. m., Thursday, August 5, 1915.

THURSDAY, AUGUST 5, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Henry A. Miller.

The Rev. Mr. Miller — In the name of the Father, and of the Son and of the Holy Ghost, Amen. Our Father, who art in Heaven, hallowed be Thy Name, Thy kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread and forgive us our trespasses as we forgive those who trespass against us, and lead us not into temptation but deliver us from evil, Amen. In the Name of the Father, and of the Son and of the Holy Ghost, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal is approved as printed. Presentation of memorials and petitions. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Berri — The Secretary is preparing a resolution which has not been handed to me this morning regarding the printing of some documents and I would ask permission to present it later.

The President — Without objection, the permission is granted.

Mr. Wickersham — If it is in order now I should like to move to reconsider the vote taken yesterday on the question of the increase of the pay of legislators. I have not the exact number — the last matter which was under consideration when the Convention arose last evening.

The President — Mr. Wickersham moves to reconsider the vote taken yesterday agreeing to the report of the Committee of the Whole, recommending the passage of the bill increasing the pay of legislators. Is the Convention ready for the question upon the motion? All in favor of the motion will say Aye, contrary No. The Noes appear to have it.

Mr. Wickersham — A division, Mr. President.

The President — A division is called for.

Mr. Wickersham — I ask for a roll call.

Mr. Lindsay — I would like to ask the gentleman what the object is in moving this reconsideration.

Mr. Wickersham — I understood that a roll call was called for on the motion. I think nothing else is in order.

The President — A slow roll call has been called for on the motion.

Mr. Deyo — I rise to a point of order.

The President — The gentleman will please state his point of order.

Mr. Deyo — The point of order is the motion to reconsider is on the table and the first motion in order would be a motion to take that motion from the table before it may be considered.

The President — The motion to reconsider, just made, is not on the table.

Mr. Quigg — Are we not in a vote?

Mr. Deyo — Mr. President, the motion to lay on the table — it was laid on the table on the motion of Mr. Wickersham last evening.

Mr. Quigg — Mr. President, we have voted on this question to reconsider and we are now in a vote, and we have called for the roll call.

The President — No one has demanded a roll call.

Mr. Wickersham — Mr. President, I demanded a roll call.

The President — Is the demand for a roll call seconded? Fifteen members of the Convention are required to second the demand for a roll call. All who wish to second the demand for a roll call on the motion to reconsider will rise and

remain standing until counted. The demand is seconded. The Secretary will call the roll on the motion to reconsider the vote in agreeing to the report of the Committee of the Whole upon the bill to increase the pay of the Legislature.

The President — A vote Aye will be a vote in favor of reconsidering the vote. A vote No will be against the reconsideration of the vote. The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Allen, F. C., Angell, Berri, Betts, Brackett, Cullinan, Deyo, Dow, Dunmore, Fancher, Ford, Johnson, Kirby, Low, Martin, L. M., Marshall, Meigs, Mereness, O'Brian, J. L., Olcott, Ostrander, Parmenter, Parsons, Pelletreau, Quigg, Rhees, Schurman, Smith, E. N., Steinbrink, Tanner, Wadsworth, Wickersham, Young, C. H., President.

Those who voted in the negative were: Messrs. Adams, Aiken, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Blauvelt, Bockes, Brenner, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Curran, Dahm, Daly, Dennis, Dick, Donovan, Dooling, Doughty, Dykman, Eisner, Eppig, Fobes, Foley, Franchot, Frank, Greff, Griffin, Haffen, Harawitz, Jones, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, McLean, Martin, F., Mathewson, Newburger, Nixon, Nye, O'Brien, M. J., Owen, Parker, Phillips, J. S., Potter, Reeves, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, R. B., Smith, T. F., Stanchfield, Standart, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wagner, Ward, Webber, C. A., Westwood, Wheeler, Whipple, White, C. J., Wiggins, Williams, Winslow, Wood, Young, F. L.

When Mr. Fancher's name was called he said: I desire to be excused from voting, and I desire to give my reasons therefor. At the session of the Convention held yesterday I was here through the discussion and voted in the rising vote against this proposition. I did so because I felt that the Convention was making the most serious mistake in raising salaries at this time. But, unfortunately, I supposed that was the end of it, and I went down to the Committee room and I was not present at the Ayes and Nays; and I desire now to state that if I had been present I should have voted against the Proposed Amendment.

I withdraw my request to be excused, Sir, and vote Aye.

When Mr. J. L. O'Brian's name was called he said: I ask to be excused from voting and will briefly state my reasons. I was one of those who voted yesterday in favor of this amendment both on the rising vote and on the roll call, and I am still just as much in favor of it as I was yesterday. As I apprehend the

situation, however, the object of this motion to reconsider is not for the purpose of attempting to kill the bill at this time, but the object of this motion to reconsider is to withhold action on this proposition for the present, for this reason: When this amendment is advanced to third reading no amendment can be made to it on third reading without recommitting it to the Committee of the Whole. There are other propositions coming before the House very shortly dealing with the subject of the duties and the terms of office of legislators. It may well be that if this House should decide to lengthen the term of Senators to four years that the House might not then desire to make the salary \$2,500 a year, and I for one am perfectly willing that this whole subject of salaries should be considered in connection with any other matters relating to the duties and powers of the Legislature, and I think it proper that the salaries should be fixed in the light of what the Convention should do, if it does anything on those subjects. I therefore, although I am in favor of this increase, and shall vote for some increase eventually, I am also in favor of the motion to reconsider and hold the matter in *status quo* at this time until the other matters come before the House. I withdraw my request to be excused and vote Aye.

When Mr. J. S. Phillips' name was called he said: Mr. President, I wish to be excused from voting and will briefly state my reasons. I dislike to disagree with my friend, the gentleman from Buffalo, Mr. O'Brian, as to procedure. It seems to me unnecessary to reconsider this vote by which the Convention agreed to the report which came from the Committee of the Whole. As I understand it, it is perfectly proper procedure that when this measure or proposal is reached upon third reading any member could at that time by making a motion to recommit to the Committee of the Whole with instructions to report forthwith, and it could in that way in accordance with the rule be amended in any way that any member desired, in accordance with the proposal, and it seems to me that this procedure is entirely unnecessary and that if it is the desire of the Convention to withhold final action upon the proposal until some other proposal comes before the Convention, they are at liberty to do so at that time. They can make any amendment that is necessary to conform to some other proposal which may come from another committee. Therefore I withdraw my request to be excused and ask to be recorded in the negative.

When Mr. Quigg's name was called he said: Mr. President, I ask to be excused from voting, and briefly to say why. Mr. President, I was buried in some books yesterday and did not have a chance to be recorded. When this subject was before the voters some years ago — I forget just how many or in what sum the

salaries of legislators were to be increased — I remember that I voted for it, and if this Convention were sitting a year ago I would vote for it here. But, Mr. President, the war in Europe has made a very great difference in my attitude toward expenses in my own family and everywhere else where I have anything to say about it. I do not see how three millions of men who are our customers can be killed, millions more wounded, vast areas of country laid waste that supply to us our best customers, and thousands of millions of national debt incurred that have got to be paid off by the people that buy our products — I do not see how that can be done without very seriously impairing our power to produce effectively, and I believe that the reaction on this country of the war in Europe is going to be very serious. Now, I am not talking hard times. We will survive, and all that, but it does not seem to me to be a proper time to increase public expenses. Now, if men are not willing to do public service without trying to make money out of it, if they are not willing to act for the public even on an insufficient reward so far as dollars go, then I think it is a great pity for the country. I believe that this vote ought to be reconsidered; I believe that this proposition ought to be rejected; I believe that now is the time for everybody to get his house in order, and I withdraw my request to be excused and vote Aye.

When Mr. Wickersham's name was called he said: Mr. President, I ask to be excused from voting and I desire to state my reasons why. I voted yesterday for this measure and I expect to vote for it again, should it come to another vote. In my opinion, the members of the Legislature should be paid more than they are now paid. They should be paid enough to enable men without other means to come here without feeling the stress of actual want and of insufficient income to enable them to devote themselves to the public service while here. I, however, moved to reconsider and I shall vote in favor of that motion to reconsider because of the suggestions made by Mr. J. L. O'Brian. It seemed to me when they were brought to my attention last evening and this morning that they called for some caution to be exercised in passing this now in advance of the various measures affecting the terms of office, or possible terms of office, of the legislators. Having stated my reasons, I now withdraw my request to be excused, and vote Aye.

When Mr. Wiggins' name was called he said: Mr. President, I ask to be excused from voting and wish to briefly state my reasons. I am impressed with the fact that this motion is the forerunner of the surrendering of our opinions and beliefs to expediency and therefore I desire to oppose the motion to reconsider, withdraw my request and vote No.

When Mr. Betts' name was called he said: Mr. President, I wish to ask to be excused from voting and briefly state my reasons. I was very much interested yesterday in the discussion that took place in this Chamber and especially in the remarks of Mr. A. E. Smith. He said that nobody could explain why certain amendments were defeated in 1911, together with the salary amendment. I think I can give him some light on that subject. The farmers and the taxpayers up the State were gunning for the salary amendment, and as they could not hide their farms when the tax collectors and the assessors come around, as the property owners in New York hide theirs in New Jersey, when on election day they went into the booth, in order to not miss the mark they voted No on every proposition and for that reason the amendments were all defeated. I agree with Mr. O'Brian that in view of the fact that the terms of the officers are to be considered by this Convention, that this matter ought to be delayed and I therefore withdraw my request to be excused and vote Aye.

When Mr. Brackett's name was called he said: I ask to withdraw my vote already cast long enough to say to the members of this Convention that if they are really and truly getting scared of the vote of last night they ought to be frank enough to say so. The excuse that this is not the time to settle the question or to postpone it until they can hear from some other question is not the way to do it. The time to settle this question is here and now. If we are going to wait until we hear from some other proposition or any other proposition that impinges on this question we never will get to the question. I again vote No. — Aye.

The President — The vote upon the motion to reconsider is 34 in the affirmative and 99 in the negative, so the motion is not agreed to.

The Secretary will proceed with the call of the districts.

Mr. Marshall — I desire to move that the Committee on Charities be discharged from further consideration of the Printed No. 331, Introductory No. 327, introduced by Mr. Wadsworth, and entitled: "Proposed Constitutional Amendment, Sections 11, 12, 13 and 15 of Article VIII of the Constitution, in relation to the State Board of Charities, providing for the visiting and inspecting of public and private institutions and societies," and that this measure be placed on general orders. I desire to discuss this question. I don't wish to interfere with the order of business, the special order of business, the finance article that has been set for this morning. I understand that the Committee on Charities is about to present a report in which they indicate that they will take no action upon this measure. It is one of very great importance and should receive consideration from the Convention. It

involves the question as to whether or not any of the charities of this State shall be free from State visitation — whether the creature shall be greater than the creator.

Mr. Wadsworth — Mr. Marshall, should you not indicate that they should not inspect institutions that do not receive State aid?

Mr. Marshall — I am not intending to argue the question, except as to what it is according to my conception. I am willing to move that this motion be laid upon the table to be taken up at some future time providing my rights are not prejudiced. I do not wish to interfere with the special order of the day and I move that this motion be laid on the table to be taken up at some future time.

The President — Mr. Marshall moves to discharge the Committee on Charities from further consideration of the Proposed Constitutional Amendment, by Mr. Wadsworth, and to lay his motion on the table. All in favor of the motion to lay on the table will say Aye. All opposed to the motion will say No. The Ayes appear to have it, the Ayes have it, and the motion prevails. The Secretary will continue the call.

Mr. Blauvelt — Mr. President, I move that the Committee of the Whole be discharged from further consideration of my Proposed Amendment, No. 31, for the purpose of amendment, reprint and recommittal, to retain its place on the general orders calendar.

The President — All in favor will say Aye, those opposed No. The motion is agreed to.

Mr. Brackett — Mr. President, I ask the privilege of the floor of the Convention for the Hon. C. B. McLaughlin, a member of the last previous Convention, and for Mr. Justice Ingraham, of the city of New York.

Mr. Wickersham — Mr. President, under the standing rules both of these gentlemen are entitled to the privileges of the floor and have been welcomed here enthusiastically by many delegates.

Mr. Landreth — I have received a memorial, or petition, addressed to the Constitutional Convention, and signed by several hundred residents of the thirty-first Senatorial District. This memorial is in the interest of the Spanish War Veterans, and I ask permission to submit the same to the Convention at this time.

The President — The gentleman from Schenectady asks permission to submit a memorial, out of order. If there is no objection, the memorial will be received, and will be referred to the Committee on Civil Service.

Mr. Schoonhut — Mr. President, I desire to present a memorial from some of the citizens of Erie county upon an amendment pending before the Committee on Civil Service.

The President — Unanimous consent is asked for the presentation of a memorial. Is there objection? There being no objection the memorial will be received and referred to the Committee on Civil Service.

Mr. Byrne — Mr. President, I ask unanimous consent to present a memorial signed by 1,000 voters from the twenty-fifth Senatorial District on the same subject.

The President — Is there objection to this memorial being received out of order? If there is no objection it will be received and referred to the Committee on Civil Service.

Mr. Linde — Mr. President, I would like to present out of order a memorial signed by 1,300 voters and ask that it be referred to the Committee on Civil Service.

The President — Mr. Linde asks unanimous consent to present out of order a memorial relating to the civil service. If there is no objection the memorial will be received and referred to the Committee on Civil Service. The Chair wishes to bring the attention of the Convention to the misunderstanding which developed yesterday afternoon regarding the hour of adjournment. The Chair answered the question by, I think, Mr. Curran, as to the time fixed in the resolution, with the statement that it was 5:30. The Chair was corrected by the gentleman from New York, by reference to the Record in which the hour of adjournment appeared to be 5 o'clock. The Chair is advised by the Secretary, and it appears by reference to the Journal, that the Chair's impression was correct and that the hour of adjournment fixed by the resolution of the Convention is 5:30. The Chair will accordingly, if there be no objection, direct that the Record be amended and corrected to conform to the Journal which is the official record of the resolutions of the Convention.

The President — Reports of standing committees.

Mr. Griffin — Mr. President, I would like unanimous consent to present this memorial that has been submitted in relation to the Spanish War Veterans from the twenty-second district.

The President — Is there objection to the presentation of the memorial? The Chair hears none and the memorial will be received and referred to the Committee on Civil Service. Reports of standing committees.

Mr. Cullinan — Mr. President, I submit this report from the Committee on Suffrage.

The Secretary — Mr. Cullinan, from the Committee on Suffrage, to which was referred Proposed Constitutional Amendments, relative to registration of absent electors, reports the following Proposed Constitutional Amendment and recommends its adoption.

PROPOSED CONSTITUTIONAL AMENDMENT

To amend Section 4 of Article II of the Constitution in respect to the enactment of election and registration laws.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section 4 of Article II of the Constitution is hereby amended to read as follows:

Laws shall be made for the regulation of elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage hereby established and for their annual registration, which shall be completed at least fifteen days before each general election. Such registration shall not be required for town and county elections, except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding state enumeration of state inhabitants, the electors shall be registered upon personal application only, but provision may be made for registration therein at the first meeting of the officers having charge of the registry of the electors without personal application of an elector whose necessary duties outside the county in the pursuit of a regular vocation, to be designated and defined, will occasion his absence therefrom during the several meetings of such officers, proper proof by such elector of the former facts being required. Electors not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of such officers.

The Secretary — Second reading: To amend Section 4 of Article II of the Constitution, in respect to the enactment of election and registration laws.

The President — Is there any special motion to be made in regard to the disposition to be made of this Proposed Amendment to the Constitution?

Mr. Cullinan — I would like to ask unanimous consent to make a brief statement in regard to the bill. The bill is a Committee bill and is supposed to reflect the gist of the criticisms of last Monday night when the several bills heretofore considered and reported were under consideration; and in addition to that the time when registration shall be completed has been changed

from ten days prior to election to fifteen days, so as to give more opportunity for examination of registration lists.

The President — Referred to the Committee of the Whole.

Mr. Wadsworth — I desire to make two reports from the Committee on Charities, which are in the hands of the Clerk, and I ask that they take the usual course.

The Secretary — Mr. Wadsworth, from the Committee on Charities, to which was referred Proposed Amendment introduced by Mr. Steinbrink (No. 378, Int. No. 371), entitled "Proposed Constitutional Amendment, to amend Section 11 of Article 8 of the Constitution, in relation to the duties and powers of the State Commission in Lunacy," report in favor of the passage of the same, with the following amendment: Page 1, line 11, after the word "lunacy" insert in italics the word "in." Also strike out the words "continue to have" and in place thereof insert in italics the word "remain." Page 2, line 4, strike out the word "the."

The President — Any motion to be made regarding the disposition of this Proposed Amendment?

Mr. Wiggins — I desire to ask leave of the Convention for permission to file a minority report not later than Monday. I make this request with no idea that it may be necessary but for the purpose of assuring myself that the present constitutional provision would permit the Legislature to establish institutional care for the feeble-minded. The general impression of the members of the Committee — and I might add right there that I was not present when the Committee report was adopted, owing to the fact that it was necessary for me to be in attendance upon the meeting of the Cities Committee which was preparing its final draft for submission to the Convention — But I understand that the opinion of the majority of the members of the Committee was that institutional regulation of the feeble-minded might be provided for under the present Constitution, the same as is provided for the insane in the State Hospital Commission. If that is so, I shall have no desire to file any minority report; but if it is not so, I think that the Constitution should so be changed that the Legislature might provide that the feeble-minded should come under the same character of a commission as is now regulating the control of the insane. Therefore, for that reason, I should like to have permission to file, if I find it necessary, a minority report, in which I know a number of the members of the Committee would join and in which I think the chairman himself would join.

The President — Is there objection to the filing of a minority report — by next Monday night, by Mr. Wiggins?

Mr. Wiggins — Monday will be entirely satisfactory.

The President — The Chair hears no objection, and the leave is granted.

Mr. Wagner — Under permission given yesterday, I offer my minority report as a member of the Committee on State Finances.

The President — The report will be laid aside until the matters now before the Convention are disposed of. There being no special disposition proposed of the report, it will be referred to the Committee of the Whole.

The Secretary will read for the Convention the second report handed up by the chairman of the Committee on Charities.

The Secretary — The Committee on Charities, after giving public hearings to each amendment submitted to it, and after careful consideration of the same, begs leave to report that it is of the opinion that with the exception of Amendment No. 378, already reported favorably, no further amendment should be made to the provisions of the existing Constitution relating to the subject of charities.

The President — The question is on agreeing to the report of the Committee. All in favor of agreeing to the report of the Committee will say Aye, contrary No. The Ayes appear to have it. The Ayes have it, and the report is agreed to.

The President — The minority report presented by the gentleman from New York, Mr. Wagner, will be received and filed.

Mr. Low — A report from the Committee on Cities.

Mr. Wagner — Mr. President, I understand that that means my report will be printed.

The President — Being received, the rule requires it to be printed.

Mr. Wagner — As a document?

The President — As a document.

Mr. Parsons — May I ask whether any one else joins in the minority report by Mr. Wagner?

Mr. Wagner — There was not. I think if the gentleman from New York, Mr. Parsons, would read it, he might join in it.

The President — The Secretary will read for the Convention the report of the Committee on Cities.

The Secretary — Mr. Low, from the Committee on Cities, to which were referred the several Proposed Constitutional Amendments relating to home rule for cities, as follows: No. 799, by Mr. Wagner; No. 187, by Mr. Sanders; No. 774, by Mr. R. B. Smith; No. 283, by Mr. J. L. O'Brian; No. 535, by Mr. Low; No. 335, by Mr. Franchot; No. 381, by Mr. Mann; No. 724, by Mr. E. N. Smith; No. 568, by Mr. Eisner; No. 629, by Mr. Weed; No. 698, by Mr. Cobb; No. 671, by Mr. Green; No. 678, by Mr. Franchot; No. 693, by Mr. Berri; No. 709, by Mr. Fobes, re-

ports that the Committee held a number of hearings on the subject-matter embraced in such Proposed Constitutional Amendments, and that it has also made a careful study of Article XII of the present Constitution, which article relates to the government of cities. The Committee reports by submitting a Proposed Amendment as follows:

“Proposed Constitutional Amendment, To amend Article XII of the Constitution, generally, in relation to cities and villages and their powers of self-government.” Said Committee reports in favor of the passage of the same and requests that said proposition be referred to the Committee of the Whole.

Second reading of the bill.

The Secretary — Second reading: To amend Article XII of the Constitution generally, in relation to cities and villages and their powers of self-government.

The President — Is there any special disposition of this Proposed Amendment desired? Referred to the Committee of the Whole.

Mr. Franchot — Mr. President, I beg leave, on behalf of the minority, to offer a minority report and ask that it be printed.

The President — The report will be received and printed.

Mr. Berri — As was expected by the Printing Committee, there has been a demand for a good many of the documents and papers that are in the charge of the Clerk and we have entirely run out of quite a number. There is not a considerable amount, however, involved in the cost, but we would ask that our files and mailing lists be put in proper shape, which is covered by the following resolution, which I hope will have unanimous consent for immediate consideration, because time is passing, and there is an urgent demand for these documents, and it has been existing for the last week or ten days, and is increasing every day.

The President — The Secretary will report the resolution.

The Secretary — By Mr. Berri: Resolved, That beginning with No. 757, there be printed 500 extra copies of all Proposed Amendments to the Constitution, including reprints. Further Resolved, That there be printed 250 extra copies of the following numbers of the Record, to wit: Numbers 2, 3, 5, 6, 9, 13, 31, 39, and 44 to 61, inclusive.

Mr. Berri — I would like to amend that by making it 300 instead of 250, as the charge will be exactly the same.

The President — Is there objection to the present consideration of the resolution reported by the Committee on Printing? The Chair hears none and the resolution is before the Convention. All in favor of the resolution will say Aye, contrary No. The Ayes have it and the resolution is agreed to.

Mr. J. S. Phillips — On behalf of Mr. Barnes, the chairman of the Committee on Legislative Powers, I submit the following report from that Committee.

The Secretary — Mr. Barnes, from the Committee on Legislative Powers, to which was referred Proposed Amendment introduced by the Committee on Legislative Powers (No. 770, Int. No. 696), entitled "Proposed Constitutional Amendment, to amend generally Article III of the Constitution, following Section 9 of such article," reports in favor of the passage of the same, without amendment.

The President — Any special disposition to be moved? The report will be referred to the Committee of the Whole. Any further reports of standing committees?

Reports of special committees? Third reading. Unfinished business of general orders. Special orders.

Mr. Stimson — Mr. President, I move the special order which is the special order of to-day.

The President — Under the resolution of the Convention heretofore adopted, the Convention will go into Committee of the Whole for the consideration of the special order of the day, the report of the Committee on State Finances upon the amendment of Article VII of the Constitution.

Mr. Lindsay — We had under consideration yesterday afternoon Special Order No. 43, or General Order No. 43, and I understood the motion of Mr. Wickersham to be, that we were to suspend and resume it this morning.

The President — The Chair is of the opinion that under the action taken by the Convention the special order for to-day is the subject for consideration.

Will Mr. McKinney take the Chair?

(Mr. McKinney takes the Chair.)

The Chairman — The Convention is in the Committee of the Whole on the special order of the day and the Clerk will read the bill proposed.

Mr. Lindsay — My attention has just been called to subdivision 8 of the order of business, of Rule 3, which provides that unfinished business of general orders precedes special orders.

Mr. Wickersham — The Convention resolved the body into Committee of the Whole for the special consideration of the finance article which was set several days ago for consideration. We are now assembled in the Committee of the Whole for that purpose only, and I will raise the point of order that no other business can be considered before this Committee of the Whole save that.

Mr. Whipple — Was the order that the gentleman speaks of a special order yesterday?

Mr. Wickersham—It was not a special order. It was under discussion on general orders, and when the Committee of the Whole takes up the General Orders calendar generally, I take it that would be the first business before it. Some days ago a resolution of the Convention was adopted setting this matter for the special order of to-day, and the Convention a few moments ago resolved itself into the Committee of the Whole for the consideration of this particular matter.

Mr. Whipple — If it was not a special order for yesterday, I do not see that the gentleman is in order.

The Chairman — The Chair will adhere to the rule announced by the President of the Convention and the Chair decides that the business is the special order of the day.

The Clerk will read.

The Secretary — No. 777, General Order No. 35, by the Committee on Finance, Mr. Parsons and others.

Mr. Stimson — The amendment proposed by the Committee on Finance in its latest form and now pending as the subject-matter of this special order is No. 777, General Order No. 35. With it has been presented a report by the Committee on Finance which is printed as Document No. 23, and which states the general reasons and conclusions of the Committee in supporting the amendment. This amendment is based upon, in part, a large number of proposals, which have been before the Convention, submitted by the gentlemen whose names are cited in the open portion of the amendment, and on behalf of the Committee I desire to express its appreciation of the assistance which it has derived from the consideration of their proposals, many items from which have been embodied in the final recommendations of the Committee. If the Convention pleases, I should like to make an introductory statement of a general character on the subject of this entire article which this amendment covers, before we take it up section by section under the rules; and I think we will gain time, although I am, of course, ready to answer questions at all times — I think we will gain time if the gentlemen will reserve their questions until after that introductory statement and until we proceed to the consideration of the article section by section. In general I also wish to say that I am very glad to report that this report of the Committee on Finance has received the unanimous assent of every member of the Committee, except that as to one portion of it, only, which I shall allude to later, one member of the Committee, Senator Wagner, has dissented. In all other respects he concurs with the recommendations of the Committee. I also want to say and to acknowledge the assistance which the Committee has derived from the Comptroller's office. The Comptroller has placed at our disposal every assistance possible and we have leaned heavily

upon him. We have been in constant conference with Mr. Wendell of that office, and Mr. Schaible, who was formerly in it, and some of the most valuable suggestions which are embodied in this article have come from that office. I think it may be said now to represent practically the views of that office on all except one point, which I shall mention while we are going over it — one incidental point. When this matter was presented to the Convention, copies have also been sent to the various houses and the various principal cities of this State and others, who have been concerned in disposing of the bonds of the State, and we have endeavored to gather suggestions from them, so far as possible. So that this report which covers all of the financial provisions of Article VII may be said to represent the best views that the Committee has been able to get from the different sources which I have enumerated. Now, the Committee has felt a very great sense of responsibility in dealing with the subject of the State credit: A debt incurred on the part of the State, unlike a debt incurred by its subdivisions, being the obligation of a sovereign power, is not open to an action at law, except with the consent of the State, and by virtue of that very fact, from the fact that the State cannot be sued, the credit of the State is affected to the highest degree by its reputation for integrity and fair dealing throughout the whole of its history. Any one who cares to look over the financial history of the States of the Union will be surprised to find how decades, almost centuries, after an act of repudiation, or bad faith, on the part of a State, that fact will be remembered by persons dealing in the securities of the States of the Union, and will impair the credit of that State; and among the various elements which go to make up the reputation or character of a State for financial integrity, one of the most important are the provisions of law which enter into the State's Constitution and regulate the method in which it incurs debts and fulfills the obligations when they are encouraged. In other words, the elements which enter into a State's reputation, one of those elements are the provisions of law which may serve to prevent too easy incurrence of debt and which may be supposed to impose upon the people of the State caution and care as to how they go into debt. For that reason, in dealing with this subject, the Committee has felt it was dealing with a subject of the utmost importance in the framing of the provisions of the fundamental law which covered that subject. Now, the provisions in our Constitution which govern the incurrence of debt by the State were introduced by the Convention of 1846. The Convention was held immediately following a period of financial stress and difficulty, in which a number of the States of the Union had been seriously involved. Following on a period of unprecedented prosperity which

ended in about 1837, there came a period of financial crisis, and, as I remember it, at least five of our neighboring States, Pennsylvania, Maryland, Illinois, Indiana and Michigan, defaulted in the obligations which they had incurred in their State debts. New York State itself turned a rather sharp corner, although it maintained its honor finally to the uttermost. It came rather close to a very serious situation, owing to the amount of money which it had been borrowing for the completion of its canal system. I find a statement by the then Governor of the State, in 1843, in his annual message to the Legislature, in which he described the situation in a way that indicated that it was pretty serious. He said: "The Legislature of 1842 convened at a period of great embarrassment in the financial affairs of the State. The treasury was empty. Our credit seriously impaired. The State's stocks were selling at ruinous sacrifices. Temporary loans were nearly matured. The time for the quarterly payment of the interest on the public debt amounting to more than twenty millions was fast approaching. Contractors were pressing for payment, and the progress of the public work virtually suspended." Out of that condition came the agitation which resulted in the provisions being inserted into the Constitution which are the basis of the Constitution now, and in regard to which our present amendment or upon which our present amendment bears. In substance, that Convention and that Constitution for the first time provided for a referendum of any law which imposed a debt upon the State. It provided that such a law must after it had been passed by the Legislature, which before that time had had plenary power — such a law must be submitted to the people for its decision; and it provided, after a masterly article upon the principle of the short ballot which I know must appeal to my friend from Saratoga — it provided that any such laws must relate to a single work or object; and that only one such law could be submitted to the people at any election, or substantially to that effect. Those provisions were then embodied into the Constitution, and they have remained in it ever since, the object being to impose upon the people of the State the duty of considering each such loan at any given time by itself, to give it care and consideration, and for the people to have the final say as to whether or not it should be incurred. Now, during the years that have intervened it has been quite clear that those restrictions have, until about ten years ago, operated as a strong conservative force upon the likelihood of this State to plunge into debt. You will find by turning to the Comptroller's report that very few debts have been incurred during that time; none of any consequence, until, as I say, a period of about fifteen years ago. The canal debt was paid off. Of course the debts incurred in the Civil War brought up the obligations of the State

again, and they were gradually paid off, and in 1893 this State was practically entirely out of debt. The result of these provisions had produced this result: That the State paid for its permanent improvements out of current revenues, a most conservative policy; a policy far more conservative than the policy adopted in general by our industries, but one which, in the judgment of your Committee, is by far the most conservative policy for a Commonwealth to follow in ordinary capital expenditures. By that I mean to say that when it became necessary to complete a new hospital or a new asylum or a new prison, the difficulties of these restrictions were such that the State provided for that hospital, or that asylum, or that prison, by an appropriation out of its current revenues, rather than incur a debt. It fell to my lot to study the result of that policy some five years ago, during the campaign of 1910 — there are some benefits to be derived from partaking in a campaign, even if you are not successful, and I had brought to my mind at that time very strongly the contrast between the sound conservative policy of the State of New York as compared with the financial policy of some of its subdivisions, including, I am sorry to say, in some respects, the financial policy prior to that time of the great city of which I am a native. I find that, whereas, in the city of New York we had been issuing bonds and issuing stock for matters which not only were not capital expenditures, but were for matters which would be worn out almost within the current year, and that we had, for instance, issued bonds for brooms. We had issued bonds for the payment of music on the recreation pier on which we were paying interest for a long time after those notes had died away; and the contrast between such a policy as that and the conservative policy which, under these restrictions, had been imposed upon this State was very marked. Now, that was the condition up to, roughly, fifteen years ago; and then this State determined to go into debt for two great principal purposes; first, of course, the improvement of the canals, and afterwards, the improvement of our highways. Now, under the pressure of those two new movements, we find now that the State of New York, leaving this old policy of being practically out of debt, has with great suddenness incurred a debt larger than any other State in the Union. The figures are given in this document submitted by the Committee in reference to it, and they are rather startling. As I stated, in 1893, the debt was nothing. In 1903, it was only a little over \$7,000,000. To-day, the net debt, that is, the debt over and beyond all sinking funds, is over \$145,000,000; and the gross debt is \$186,000,000; and in addition to that we have authorized debts, although the bonds have not yet been issued, for a total of over

\$231,000,000. Now, in other words, the per capita debt has arisen from ninety-four cents per capita in 1903, to \$15.04 per capita at the present time. That is a very much larger debt than that of any other State in the country. It is very much larger than the great States which are our neighbors. Pennsylvania has practically no debt; its sinking fund accumulations exceeding its obligations. In Illinois the per capita debt is only 29 cents; New Jersey, 24 cents; Indiana, 49 cents; Michigan, \$2.41. The chairman of the Committee on Taxation handed me a calculation yesterday which presented the fact in an even more startling way. Taking into consideration not only the debt of the State, but the debt of its subdivisions and excluding New York city from the calculation, there is to-day on every acre of the State outside of Greater New York, according to Mr. Saxe's figures, a debt of over \$13; and if you include New York city, the debt is some \$48 per acre.

Mr. M. Saxe — Mr. Chairman, may I interrupt only to point out that that is after deducting sinking fund assets?

Mr. Stimson — So I assumed. Because, as it has happened, the tremendous increase of our State debt, which has come in the last ten years, has been coincident with a similar great increase in the debt of the cities, the counties, the towns and the other subdivisions of the State, so that New York to-day has the same dangerous pre-eminence in regard to its municipal debts, as we will call them, that it has in its State debts. The United States Census Bureau summed it up in 1915, when it said: "The civil divisions of the State of New York gathered a total indebtedness far in excess of that reported by any other State. The total indebtedness, less sinking fund assets, was \$1,046,226,000, which amount was equal to over 30 per cent. of the indebtedness of all civil divisions in the United States, and more than four times the amount reported by Pennsylvania, which ranks the second." The same thing is true when you reduce it per capita. Our per capita municipal debt is equally pre-eminent with the aggregate debt. Well, now, under these circumstances, your Committee found that, while the credit of the State was still very high — no whisper had been made against that at all, or against the ultimate resolution and liability of the State to pay its debts — this very great increase in its debt had caused a great deal of discussion and careful consideration among those specialists who make a specialty of dealing in our securities, in respect to our methods, and pretty widespread inquiry which we have made among the various houses dealing in States and municipal securities all over the country have elicited a unanimity of sentiment that the situation was one which required prompt and rather vigorous attention,

and there was also quite a unanimity in the lines of their criticisms and the suggestions of their remedies. In general, the criticisms and the remedies came down to these points, and I should say that I am speaking now of the Committee's conclusions after full consideration of all suggestions from all sides. In the first place, the system of 1846, which had worked admirably up to a certain point, seemed to be open to this defect: It permitted a debt to be incurred which need not be paid for a period of fifty years, and during which time it involved no obligation except the annual interest, of course, and the payment of the theoretically slight amount required for a sinking fund of ultimately fifty years off, to pay off that debt, and, in the second place, the other criticism, the principal criticism, was that there was no suggestion or machinery provided in the Constitution by which the length of life of the improvements for which the bonds were supposed to be issued was correlated in any way to the length of time for which you might be issuing bonds. Now, those two criticisms were the ones which were principally and commonly made by every one who discussed the subject of New York's method. They pointed out particularly with regard to the latter criticism that we had issued bonds for highways which did not mature for fifty years, and that a very large portion of the proceeds of those bonds were being used for construction of a portion of these roads which might not and certainly would not live more than four or five years. The Highway Commissioner has furnished us with some figures on this taken from a consideration of a certain number of typical roads, and out of those figures it would appear that the amount spent on roads can be practically divided into, roughly, three portions—roughly about one-third each—of which one-third, or 33 per cent., would go to excavation, culverts, what you might call permanent construction; another third to the foundations of the roads, and a rather larger amount still to the surface of the roads. In the case of many of those roads, in fact, the great bulk of the roads which we are building—the water-bound and bituminous surfacing of roads—the life of this latter third, in the case of a water-bound road, could not even under ideal maintenance last more than five years, and probably less; and in the case of bituminous roads could not under ideal maintenance last more than ten years, and probably less there. So that, in other words, a very large portion of the proceeds of these fifty-year bonds were being applied to construction which would pass away or disappear before one-fifth, at the utmost, of the life of the bonds had expired, and for forty years thereafter the taxpayers of this State, during succeeding generations, would be paying interest on bonds out of which they were not deriving a penny of benefit, as to that portion

of the proceeds. Now, one of the great excuses that always comes up when a community or a State is attempting to repudiate its obligations is that, "Well, we are not getting any good out of that. It is not an obligation for which we have derived any benefit. We have no *quid pro quo*, why should we be bound to continue the obligation?" Every New Yorker trusts that that is not coming up, that it is not going to be advanced in our case, but it is the part of prudence for people framing the fundamental law of this State to avoid that temptation. So that the two principal remedies which your Committee recommends in its amendment bear upon those suggestions. In the first place we recommend that all loans created hereafter shall be made only on serial bonds; and, in the second place, we recommend that the life of the debt thus created shall be no longer than the probable life of the improvement into which the proceeds of the debt are to go. In other words, I want to call the attention of the Convention here to this feature. The reason why we recommend the issue of serial bonds has no relation, primarily, to those lesser questions of the marketability of those bonds, or the administrative reasons which indicate that those bonds are very much preferable to the old-style kind, which reasons I will take up in a few minutes. The fundamental reason is the big question that the use of serial bonds is a great fundamental, governmental way to impose upon a people when it is going into debt a greater sense of responsibility, and it comes in this way: An issue of serial bonds in the form provided in this amendment means that that debt must be begun to be repaid within a year. It means that every year until the close of the debt, until the debt is finally paid off, the State is paying a part of the principal. It means that when an administration decides to go into debt for a new improvement, it can't relegate the thought of the payment of that debt to a happy future when some other administration will be in control of the government, but that it, itself, has got to make provision at once for the payment of the first installment on it within a year. Your Committee regards that as an additional element of conservatism and responsibility imposed upon a people which far outweighs any of the other considerations. There are other considerations and very important ones, and they have been brought very favorably to the attention of your Committee as they have to the people of this State, arising out of the irregularities which have occurred in the administration of the debts under the present system, and in the administration of the sinking funds which have been created to finally liquidate those debts. Now, of course, it is not the duty of this body to go into the question of how those irregularities have occurred, except so far as it may throw light upon the remedy for the future. I only

wish to say, to avoid any misconception, that your Committee has found nothing in the way of any dishonesty or any improper purpose or any irregularity of a moral kind. But the plain and simple fact is this, that the original law provided — this I think was one of the defects of our forefathers in their Constitution — it provided that these debts should be paid off by a direct tax which had to be specified in the law when it was submitted to the people. Well, in the administration of that requirement, there have been some very astonishing things done. I am very happy to say that the errors have practically all been against the government and not against the creditors of the State. The State has set aside too much rather than too little, but they have shown, from one cause or another, a lack of certainty of administration which has been very remarkable. For instance, in one case a sinking fund was started and carried on for several years before the total bonds were issued for which it was to be provided, apparently under an idea that that was required by the law. In practically every case the amount of the tax has been fixed in the law with reference to the assessed values of taxable property in the State, quite regardless of the fact that those values would increase; and as they did increase, the amount put into the sinking fund swelled beyond the original amount calculated to be necessary, so that in practically all of the funds there is a greater amount than would be required by a more mathematical administration. Now, of course, in the case of the serial bond, that cannot occur. For whatever reason these irregularities have occurred, they would be practically impossible under a system of serial bonds. All that has to be done there is to provide enough for the payment of the interest and the payment of the instalment of principal, and both of those are capable of calculation by the rules of arithmetic, going into no higher mathematics. In the second place, the serial bonds have another great administrative advantage, that there is no necessity of providing for the care of a great fund to be held in the hands of any public officer, to be reinvested and reinvested from year to year, according to the discretion of that officer. Your Committee has felt that that was a very important point of difference. While it has had no thought whatever reflecting in any way upon the administration of that matter by the present officers of the State, the possibilities covering this long period in the future are simply immense. Under the Finance Law of this State, investments of its sinking funds can be made in United States government bonds, in State bonds, in city bonds, in township bonds, in county bonds, in village bonds, and in school district bonds, without any restriction whatever, except in the discretion of the officer who handles the fund. I have in my hand

a list of the present investments of the sinking funds of this State and they cover a very wide range of those different possibilities of investment. Now, gentlemen, that, assuming other things to be equal, is not a power which should be left in the hands of any man or any body of men in a free community. Assuming that it can be substituted by a system equally good in other respects, it is in the interest of clean, non-political administration that that power should not exist in the hands of a public officer. Then, there is always the element of risk, financial risk, in such investments. I find in looking through history that a sinking fund in the State of Mississippi that in one year amounted to \$800,000, within one year had shrunk to a little over \$500,000 and within ten years had shrunk to \$100,000. Now, what can happen in other communities can, in the long period of years, happen in every community, including our own. The serial bond system avoids entirely that risk. Finally, from the very fact that the serial bond is simply a method of making a people pay its debts promptly, it is a very much more economical method of financing a given loan. The figures on that are simply astounding. If our Canal debt of \$118,000,000 had been issued in the shape of serial bonds instead of the long-term bonds in which it was issued, the State of New York would pay out at the close of the maturity of that debt \$46,677,000 less than it will pay out under the method by which it was issued. That is something to be considered. Of course it means that that is a saving from interest; it means that we save that because we pay the debt more promptly, but when you consider that that debt, those payments are taken not out of an individual fund, which is an investment and which investment would be lost by the payment on the serial bonds, but instead of that is taken in the shape of infinitesimally small payments from taxpayers throughout the State, which are in all probability not under investment, why, the gain is sheer gain. Well, now, these considerations would bring your Committee to an absolutely conclusive opinion in favor of the serial bond system, even if those bonds were less marketable than the old-style straight-term bonds. Your Committee would feel that the money which was to be saved by the new method at the end of the transaction, and the tremendous governmental benefits in the way of extra conservatism, easier administration, absence of political possibilities and lack of risk of investment, would far outweigh even the very considerable initial loss in the marketability of the bonds. But, as to that, I am glad to say that the investigations that we have made indicate that serial bonds now and for some time in the past have been at least as marketable as the others. There is no loss, even in the

beginning, in coming to that basis, and we have made a very careful investigation of it; but I say that, in my opinion, and in the opinion of the Committee, that is a very minor matter. We would feel it the duty of the State to go on to the other system even if it had to suffer in the shape of less marketability in the beginning, quite a considerable loss. I lay emphasis on that because that is the only point upon which there has been any difference of opinion between the Comptroller's office and the Committee. The Comptroller's office, while gladly admitting the superiority of the system of serial bonds, desires to have the avenue still left open alternately for investment in the other class of bonds. Your Committee has had absolutely no difference of opinion in deciding against him on that point. If we are going to go into this new system of finance it has got to be carried on under different Comptrollers, year after year and year after year, and we should go to it fully and without the possibility of a lapse of administration. Judging from what we know of human nature it is not an easy thing for anybody to give up the advantages of power and control of these huge funds and the temptation might come not to try to issue serial bonds in a doubtful case where perhaps a little extra effort, if you had to do it, would get them out, and there has been not the slightest difference of opinion in our Committee that the State should go over to the other system. As to the other remedy, the remedy of co-ordinating the life of the bonds to the life of the improvement, your Committee has after very careful discussion recommended the plan by which it is made compulsory upon the Legislature to cover by general law, that method in a statute, similar to that which has been adopted in the State of Massachusetts. We tried and discussed all kinds of ways of applying that principle. Everybody admitted that the principle ought to be applied but when we came to try to apply it that method had its difficulties. This seems to be altogether the simplest, and in our amendment we finally adopted it. That is, if this amendment becomes a part of the Constitution, no new debt on the part of the State can be incurred until the Legislature has by general law fixed its judgment as to the length of bonds which should be issued for the different kinds of improvements, according to the standard laid down in the Constitution that the life of that improvement must equal the life of the bond. And the statute which has been adopted in Massachusetts shows the same very glaring light upon the difference in conservatism which it imposes there in that great commonwealth compared with the absence of any such rule here. For instance, their statute divides the different classes of improvement and the different classes of bonds which can be issued, according to their life. It allows for the construction of sewers, for instance, for sanitary and surface drainage purposes,

and sewage disposal, thirty years; for the acquiring of land for public parks, thirty years; for schoolhouses or buildings for any municipal or departmental purpose, twenty years; for additions to schoolhouses, where such additions increase the floor space of the building, twenty years; for the construction of bridges, or stone or concrete or iron superstructure, twenty years; for the original construction of streets or highways, or the widening of streets and highways, including land-damage and cost of pavements, and sidewalks at the time of construction, ten years; for the construction of stone, block, brick or other permanent pavement of a similar lasting character, ten years; for macadam pavement or other road material under specifications approved by the Massachusetts Highway Commission, five years; and so on. Now the present amendment makes it mandatory upon the Legislature to adopt some such general scheme and leaves to its discretion the length of time which it is to decide upon and in order that the validity of bonds may not be affected by any man's judgment in the Legislature, or be subject to any proof of extrinsic facts that they were wrong, the judgment of the Legislature is made conclusive. Now when your Committee reached the treatment of the existing sinking fund it found a very difficult and delicate situation. Some of the errors seemed to have arisen in the Constitution itself, or out of possibilities of misconstruction of that Constitution: Those errors in the statutes which carried out the policy of the Constitution. Some seemed to come from administration of both statutes and Constitution, but the facts were these: That in some years there had been very large overpayment into these sinking funds, much more than was necessary on a mathematical basis of amortization, and in other years the Legislature had apparently felt perfectly free not to put anything in, evidently relying upon the fact that in the preceding year they had put in too much. Well, a situation which left open such a possibility as that was not a possibility which could be looked upon with equanimity from any standpoint, whether from the standpoint of the taxpayer of the State or whether from the standpoint of the holder of the bond. There was an entire absence of certainty, simplicity and definiteness in the contributions which were made into the sinking fund. Naturally from the little glimpse that I have given you of it, you can imagine that the question of the legal rights of anybody in regard to these sinking funds are very confused. I should not myself undertake — I should hate to have to give an opinion on the validity or the constitutionality of some of those statutes or the legal rights which have come down since. Well, it seemed to your Committee, I might say, here, that among the different opinions that have come up on this subject, they differed just as much as opinions have in

the past. Some people have wanted to stick their hands into those sinking funds and take the amount that is in there now on the theory that it is too much and spend it for the general purposes of the State. Other people have wanted to do it for other purposes; and other people, going to the other extreme, have wanted to go on at the extreme rate under which contributions have been made in some of these preceding years. But now your Committee reached this conclusion, after very careful consideration: In the first place it decided that under no circumstances would it recommend or permit a recommendation that anything now in the sinking fund and in the shape of accumulations there now should be permitted to be taken out and used for any other purpose. It may be that it is unnecessarily there — we think it is. But it is there, and, what is more, the State of New York has bragged about its being there. I hold in my hands advertisements for issues of bonds which have been issued by the Comptroller's office for new issue, issued for the purpose of getting new purchasers of new issues of their bonds, and in the recital of the character of the bonds they announce that a sinking fund is established by law for the extinguishment of the indebtedness by the sale of the aforesaid bonds and for the payment of the interest thereon as it becomes due; and then on the other sheet they give an enumeration of the various sinking funds now in existence at the time they are making this offer of new bonds, and in those recitals they show these accumulations as a part of the funds down to the last dollar. Now, your Committee has felt that if under whatever pretext or for whatever purpose or under whatever legal claim of right the State of New York, after having made that announcement, should be obliged in later years to show that that fund has diminished, they would have to give their reasons, and the majority of our Committee did not want to have the State of New York put in a position where it must give reasons or explanations for a transaction of that kind, however technically justified those explanations might be. So that the first proposition was that the sinking fund from now on should start with the condition where they are now. I might say a reading of the Constitution, while it does not bear upon all the phases of this question, Section 5 of Article VII contains a very strong pronouncement when it says "The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided." Now, to the average reader, a sinking fund means a fund and it means a fund however you may interpret that provision that those funds are for the payment of interest; to the

average reader a fund is looked upon as something which is kept for the ultimate security of the principal of the debt. I speak of this because one of the suggestions by one of our Committee in his minority report is that we shall take out of this fund from now on, without putting anything more in, the amount necessary for the interest on the bond.

Mr. Wagner — I think it ought to be stated, provided the amount is in excess of the fund.

Mr. Stimson — I do assume that. It turns out that as a matter of fact this would not grant any real relief, unless you stop all future payments into the fund because the only funds which have a very large surplus are funds where the surplus is so large that it cares for — the annual return, not counting the amount in the fund now, will provide for the annual increase, the annual contribution, and will provide for the interest of the debt up to a very small balance. And really, that very small balance is the only practical difference between Senator Wagner's proposition and ours. In the opinion of the rest of the Committee the State of New York should not go into such a question. We should start with the proposition that those funds there should remain inviolate and should be continued on a proper basis of amortization. Now, when we go on with the second step, as to what we shall do in the future, the amendment of the Committee, taking into consideration all of these difficulties which I have alluded to, has provided this: It provides that in the future there shall be done what never has been done in the past, there shall be placed into the Constitution a definite, clear-cut rule of amortization which shall provide that every year the Comptroller shall appraise the amount of those funds so as to be sure there have been no losses in market value during the preceding year and shall calculate a sum of money which, if paid in every year, to the same amount, would amortize the total principal of the debt by the date of its maturity. And then it provides that if in any year the Legislature fails to appropriate the amount so certified by the Comptroller, it shall be the duty of the Comptroller to take it out of the next current funds of the State which pass through his hands. In other words, the Proposed Amendment provides a simple, constitutional and as nearly automatic remedy as can be devised, in the opinion of your Committee. It pays no attention to the confused legal rights of the past. It does not seek to take those away. If there are any rights in excess of what we provide, it leaves the holder to assert them; but it provides a remedy so clear, so adequate and so simple and so capable of enforcement that we feel very certain no one will ever seek to assert more than would be thus given in the Constitution. You

will see, without my stating it in detail, that that remedy virtually imposes in favor of the holders of these bonds something that would be similar to what we know as a lien upon future property, coming ahead of the current expenses of the State. It makes it the mandatory duty of an executive officer through whose hands the current revenues of the State pass, provided a certain condition is fulfilled, namely, that the Legislature had not made the appropriation, to take from those funds the requisite amount of this amortization contribution and apply it to the fund in question; and, of course, if he does not do it, he is open to mandamus. It leaves to the Legislature entire discretion as to how the appropriation will be made. It thus removes one of the errors which has existed in the opinion of your Committee in the past. The framers of the Constitution of 1846 sought to limit the method by which this tax could be raised to direct taxation. That method not only opened up these errors of administration, but when the time came when the State desired to raise moneys by other methods than by direct taxation, and it had plenty of money in its hands, it was obliged in 1906, if I remember the date correctly, to get an amendment to the Constitution, in order that it might raise the money in a different and easier way. Now, your Committee believes that all those considerations should be left to the discretion of the Legislature. Who can tell during the next fifty years what new methods, what better methods in taxation may be devised? Those are peculiarly a matter for legislative determination. The only thing that should be fixed is that if the Legislature in its discretion does not raise such a tax, does not provide such a contribution to the funds, it shall then be the duty of the Comptroller to take it out of the next current revenues of the State. The State cannot go on and pay its regular living expenses until it pays its debts; and, of course — of course that means the Legislature won't fail to bring it about. That means that the debts will be paid and that the sinking fund provisions will be provided for. Now, there are one or two other provisions, and I will have covered the amendment. The serial bond method in the opinion of your Committee offered so many tremendous advantages over the existing system that your Committee has felt that there should be authority granted to the Legislature to refund the outstanding old-style bonds with new serial bonds, provided the consent of the present holders of those bonds could be obtained. It has been calculated, as is shown in this report of the Committee, that if we should refund the outstanding canal debt of the present day of \$118,000,000, even at an increase of interest, in order to attract the bonds, of over one-quarter of 1 per cent., there would still be a saving in the ultimate cost to the State, that is, the

ultimate amount of money which the State will have to pay out to retire that debt and its interest — there would be a saving of over \$34,000,000. Now, that, in the opinion of your Committee, is worth while; it is worth while, while we are readjusting this system, not to overlook that little drop in the bucket, but to provide means by which, in its authority and subject to the limitations which are provided in the Constitution, the Legislature can refund those debts if a favorable opportunity occurs. The limitations which our amendment suggests are the following: In the first place, the bond should be exchanged dollar for dollar, or at par; in the second place, the new debt should not run for any longer time than the limit of the present outstanding debt. Any extension beyond that time would be, of course, to a certain extent, a dilution of the debt; and, finally, the Committee has also inserted the provision that in making provision for the change the Legislature should not provide for any method which would involve the State in a greater comparative cost in the retirement of the new debt than it would be under the old debt. As I say, we have a margin, according to the Comptroller's calculation, of \$34,000,000 in that comparative cost as to the canal debt alone. So, I think it is a safe limitation to put upon the Legislature. Inside of that margin they can probably arrive at conditions and terms which would be acceptable to the bondholders, and yet result in a great saving to the State. Now, that provides in substance the outline of the machinery, the general provisions for incurring the debt, and the method of taking care of the sinking funds, which your Committee recommends. There is, however, one further proposition, and that is in regard to the highway debt, which requires a little special treatment. Probably many of you remember the history of the highway debt. When the State decided to go into the construction of highways, by going into debt, it did not take advantage of the provisions of Section 4, which I have been talking about here, provided in the old Constitution. In other words, it did not submit the direct proposition to the people. Instead, they amended the Constitution in regard to highway debts, and in 1905 an amendment was submitted to the people which provided, roughly, as follows: That a debt or debts of the State may be authorized by law for the improvement of highways. The aggregate of the debts authorized by this section shall not at any one time exceed the sum of \$50,000,000. You will notice that took effect without any submission to the people, and in fact there is an express provision at the end of that same section, "None of the provisions of the fourth section of this article" — which are the provisions for submitting it to the people, — "shall apply to debts for the improvement of highways hereby

authorized." In other words, under that provision of the Constitution adopted that year, there was authorized \$50,000,000 or more of bonds, and to run for fifty years. And, that was not all. The only limitation was that the aggregate of the debts authorized in this section shall not at any one time exceed the sum of \$50,000,000, so that, in other words, as fast as the State retired those bonds, it could go ahead and issue more without any reference to the people. There was what has been denominated an endless chain provided for the issuing of bonds for highways under that section. The endless chain is somewhat clogged for the next fifty years, owing to the fact that the bonds which were issued are still outstanding; but as soon as they are paid, if that section remain, there would be nothing in the way of a referendum to the people to prevent another \$50,000,000 being issued in its place. Well, seven years after that we wanted more highways and more bonds, and we did not want to wait for the fifty years, so, in spite of the provisions of this section which to some of us rather indicated that there was a sort of finality about this method, that the people who voted the \$50,000,000 thought no more would be issued except in retirement of those bonds — another referendum was submitted to the people, this time under the other section, Section 4, for \$50,000,000 more. And so the highway debt authorized by the State to-day comes under two sections, one of them the particular one I have just alluded to, Section 12, and the other the old provision for all debts incurred in behalf of the State being submitted to the people. Now, your Committee is very clearly of the opinion that that divergence of method should not continue. There is no reason for it in logic or in any argument that can be advanced. Your Committee sees no reason why, if any further obligations are to be made for moneys for highways, they should not be made through the regular machinery provided by which all other debts have to be incurred, namely, under the provisions of Section 4. And so the amendment of your Committee provides for a termination of this section, the authority granted under that, while, of course, ratifying all bonds issued thereunder and ratifying all other obligations provided for in it, with the object that hereafter all debts of the State, whether for canals, highways or any other purpose, shall be issued under the provision of Section 4 alone. Now, there is just one other provision that I need to allude to, and that is the very first section in this Proposed Amendment, an amendment to Section 2 of the Article. I will only say a word about it at present, until we go over it — Section 2 was created in 1846, very evidently, from its language, for the purpose of meeting emergencies or emergent needs of revenue in the State. It is a provision similar to those that

exist in almost every charter of every city, and the Constitution of every State, aimed to meet the condition that the State may have to borrow temporarily to meet expenses for which appropriations have been made, but for which revenues have not yet come in. Now, the difficulty with the old section was that its language was not precise on that point. The old section provided that the State may, to meet casual deficits or failures in revenue, or for expenses not provided for — a sort of loophole — contract debts to the extent of a million dollars. Well, a million dollars seemed pretty big in 1846; such a provision seems less large now. So the provision was defective in two respects, as has been brought out by experience in the State; first, that it was not clearly limited to borrowings in anticipation of future revenue; and, second, that it put on a fixed and arbitrary limit of \$1,000,000. Your Committee found that a few years ago, when the State was embarking on the very worthy object of buying the Saratoga Reservation, an object with which I have the heartiest sympathy and of which I have the most delightful recollections, they used this section to issue bonds in payment of the reservation to the extent of some \$990,000 out of the million. As I say, I would not for anything give up the Saratoga Reservation. I think it ought to be preserved, encouraged and taken care of, but I do not think it was good finance to gobble up all the emergency borrowing power of the State to pay for it. As a matter of fact, last winter, when the emergency came and the State needed money to meet a deficit in its revenues, the State was placed in a very embarrassing position. They needed about \$7,000,000 to pay for current expenses. The appropriations had been made, the revenues were coming in, but there was no provision in the Constitution expressly covering that point, and so the State of New York had to go out and borrow that money on an implied power, and the people who were asked to take its bonds hesitated a long time as to whether they would accept them. And, although I understand that a decision by the Appellate Division has been obtained which ratified that emergency action and that implied power, yet your Committee felt that the matter should not be left open to doubt in the future, and the amendment which was provided in here is an attempt to make clear Section 2 of the Constitution, a section which will provide for emergency loans to the extent of appropriations which have been actually made, such loans to be paid — payable and paid — within one year. Now, Mr. Clinton reminds me that the loans under this are confined, of course, to the anticipation of the receipt of taxes, and so they are limited to the ordinary provisions, as the Committee believes, which are provided for in substantially all governmental divisions of every State that have to

borrow money for such purposes. Now, I have covered the provisions which this amendment is aimed to reach. May I make this suggestion? I was going to suggest that we take up the amendment, section by section, and that it would be in the interest of a business-like method of going through it, if the argument on the questions relates to those sections as they come along. Of course, if there is any general question that anybody wishes to ask in regard to that, why I would be very glad to answer it, but if it is a question that relates to one of the sections, I would suggest that it might be more in the interest of a prompt disposition of the matter to take it up when we reach that particular section.

Mr. Clinton — The first question I desire to ask may excite some discussion, and it arises on the wording of Section 4 and it involves the effect of that section upon the Canal Referendum Bill now pending before the people. The other question which I desire to ask is general in its nature. If the chairman of the Committee would prefer, I will ask the gentleman the question and leave the discussion of the effect of Section 4 until we reach it. I wish to say, Mr. Stimson, that the general policy of these provisions you have been courteous enough from time to time to discuss with me, and there is no serious disagreement — there is no disagreement between us as to the policy, but I do not understand from a casual reading of this proposal, that you have in it any protection for the sinking funds which may be created by this amendment.

Mr. Stimson — The purpose of the Committee was that there should be no sinking fund created, but that, under the provisions of Section 4, all bonds issued hereafter, including the one for which authorization is now pending, should be serial bonds. And it is the opinion of the Committee that lines 18 to 22, page 3, provides explicitly for that. Remember, this Constitution has to go to the people, and this provision becomes effective only in case it is ratified by them, and this provides that, except for the emergency debts provided for in Sections 2 and 3, "all debts hereafter contracted by the State, pursuant to an authorization therefor, heretofore or hereafter made, and each portion of any such debt from time to time so contracted, shall be paid in equal annual instalments." In other words, it was the purpose of this amendment that all bonds issued hereafter, whether they are the remaining highway bonds, whether they are the canal bonds which are proposed to be submitted to the people this autumn, or whether they are any other bonds hereafter authorized, shall be issued in serial bonds, and that no new sinking fund shall be created.

Mr. Clinton — The plan, therefore, is that, although bonds may be issued, they shall be payable annually, and, being paid annually, there will be no necessity for a sinking fund?

Mr. Stimson — Precisely.

Mr. Cullinan — Have you in this bill, or can you refer to, any particular section which will throw any light upon the purpose or the result of the issuing of serial bonds with reference to the immediate taxation upon real estate in the State of New York as contradistinguished from the taxation that ultimately comes from the fifty-year plan?

Mr. Stimson — Of course, there is no such calculation in the amendment, but I can furnish you with calculations as to what will be saved under any given circumstances that you may care to suggest.

Mr. Cullinan — Well, what will be the tax next year in the State of New York upon real estate if we pursue the serial plan?

Mr. Stimson — I cannot calculate that. I can tell you the amount that has to be raised. The total charges next year for the sinking funds, that is, on the present debt of the State and its interest, which would have to be raised, according to the calculations of the Comptroller, and assuming that the sinking funds earn their present rate, which is about $3\frac{1}{2}$ per cent., would be \$7,867,247.34.

Mr. Cullinan — That is satisfactory.

Mr. Wagner — Interest alone?

Mr. Stimson — That includes everything.

Mr. Schurman — The chairman of the Committee has explained the net debt. The net debt at the present time is \$145,500,000, but when the total authorized debt has been contracted, it will amount to about \$231,000,000?

Mr. Stimson — That is my recollection.

Mr. Schurman — Can you tell me what the net debt will be when the total authorized debt has reached the sum of \$231,000,000?

Mr. Stimson — That would be impossible to compute without knowing what the state of the sinking fund is at that time, and it would also depend wholly upon the time, which is uncertain, when the bonds are going to be issued, and the state of the sinking fund will depend wholly upon the time at which you fix the calculation. It is growing all the time, and unless I know the date that you set, which is still uncertain because the bonds are not yet issued and nobody knows when they will be issued, I cannot answer.

Mr. Schurman — The important point, then, is that no date has been fixed for the issuing of new bonds?

Mr. Stimson — Not at all. The bonds are issued according to the requirements of the work, as the work goes along.

Mr. Wagner — I would like to suggest that if in that is included the \$27,000,000, the question of the issuance of which is to be submitted to the people this fall — those have not even been authorized.

Mr. Stimson — I understand that the Comptroller did not include anything except what has already been authorized. The calculations came from his office.

Mr. Wagner — How would he get \$231,000,000?

Mr. Stimson — Offhand, I will have to refer you to him.

Mr. Brackett — I want to say, in answer to the question of Senator Wagner as to how he came to get the \$231,000,000, that we have had four years of Democratic administration.

Mr. Stimson — Then, Mr. Chairman, I ask that General Orders be called for and I ask to have this proposal read section by section.

The Chairman — The proposal will now be considered section by section. The Clerk will read the first section, commencing with Section 2.

The Secretary — Section 2. The State may contract debts in anticipation of the receipt of taxes and revenues, direct or indirect, for the purposes and within the amounts of appropriations theretofore made; bonds or other obligations for the moneys so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from said taxes and revenues within one year from the date of issue.

The Chairman — The question is on the adoption of Section 2.

Mr. Wagner — I would ask to have expunged from the Record the statement made a moment ago by the delegate from Saratoga, which escaped my attention. I did not have a chance to reply to it. The statement is without foundation, and I do not think the delegate would object to its being expunged.

Mr. Brackett — Expunged? Accentuated and underscored!

Mr. Wagner — It almost tempts me to reply, but I do not want to get into that discussion. It is absolutely unfounded and if the distinguished leader here does not want to get into an irrelevant discussion, I suggest that he advise the Senator to hold his peace.

The Chairman — The question is on the adoption of the first section, No. 2.

Mr. Stimson — Mr. Chairman, I move the adoption of that section.

Mr. Marshall — Merely for the sake of uniformity in expression, I desire to call attention to the fact that on line 10, page 2, appears the word "said." It has been considered wise heretofore to keep out of clauses of the Constitution the word "said." In a very few lines farther down we have the word "such," and the word "such" is a much better word than "said."

Mr. Stimson — Mr. Chairman, I am very glad to consent to that amendment.

The Chairman — Will the delegate from New York make a motion to that effect?

Mr. Marshall — Yes. Mr. Chairman, I move to strike out the word "said" in line 10, page 2, and substitute therefor the word "such."

Mr. Stimson — Mr. Chairman, I accept that amendment.

Mr. C. H. Young — May I ask the chairman of the Committee this question: Under this clause, as it now reads, is it not possible for the State to borrow all the money that it needs during the year the day after the budget is created? In other words, is not the language so broad that the money could be borrowed long before it may be needed, and, if that be so, ought not the language be so changed that the money only could be borrowed when needed, rather than in advance?

Mr. Stimson — The answer to that, I think, Mr. Chairman, is this: That no money could be borrowed until the amount is actually appropriated, and, I should strongly deprecate the placing of any greater limitation upon it than that. This is one of the most delicate functions of the State. No one can foresee all the contingencies that may arise, and the limitations and restrictions which are in here, namely, that the money must be appropriated; it must be made in anticipation of the receipt of taxes and revenue, and that it can only be used upon obligations payable in one year I think makes it quite impossible to be subject to any serious abuse.

The Chairman — The question is on the amendment offered by the delegate from New York, Mr. Marshall. The Clerk will read the amendment.

The Secretary — Page 2, line 10, strike out the word "said" and insert in the place thereof the word "such."

The Chairman — All in favor of the adoption of that amendment will please say Aye, opposed No. The amendment seems to be carried and it is carried. The question now is on the adoption of Section 2 of the proposed amendment. All in favor of the adoption of this section will say Aye, opposed No. The Ayes seem to have it. The Ayes have it and the proposed section is adopted.

Mr. Stimson — I now move the adoption of Section 4, and I ask that the section be read.

The Secretary — Section 4. Except the debt specified in Sections 2 and 3 of this article, no debt shall be hereafter contracted by or in behalf of the State unless such debt shall be authorized by law, for some single work or object, to be distinctly specified

therein. On the final passage of such bill in either House of the Legislature, the question shall be taken by Ayes and Noes, to be duly entered on the Journals thereof and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such an election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law or any bill shall be submitted to be voted for or against. The Legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time by law forbid the contracting of any further debt or liability under such law. Except the debts specified in Sections 2 and 3 of this article, all debts hereafter contracted by the State, pursuant to an authorization therefor, heretofore or hereafter made and each portion or any such debt from time to time so contracted, shall be paid in equal annual instalments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years, after such debt or portion thereof, shall have been contracted. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by general laws, which determination shall be conclusive. The Legislature may from time to time alter the rate of interest to be paid upon any State debt which has been or may be authorized pursuant to the provisions of this section or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bond or other evidence thereof, which has been or shall be created or issued before such alterations. The money arising from any loan creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability and for no other purpose whatever.

Mr. Stimson — Before discussion I wish to call the attention of the members of the Convention to the fact that certain of the italicized statements on pages 2, 3 and 4 are merely old matter which has been transferred, or transposed. To make it exact, the old matter that is transposed is on page 2, lines 20 to 26; page 3, lines 1 to 3, and page 4, lines 4 to 10, which matter is all old matter which has been transposed and is italicized merely for that purpose.

Mr. Quigg — I want to suggest an amendment which I think can be disposed of in a minute, in the interest of, well, being specific and using good English. I call the gentleman's attention

on page 3 to line 3 which reads: "that no such amendment shall be submitted to be voted on under certain circumstances," that is no bill shall be submitted to be voted for or against. Of course, no bill is ever submitted to the people to be voted for.

Mr. D. Nicoll — That is the language in the present Constitution.

Mr. Quigg — That may be so, but that doesn't make it good English. And no bill is submitted to be voted against, and I would suggest that the words "for or against" be stricken out and the word "upon" be used.

Mr. Stimson — The language to which Mr. Quigg objects is the language in the present Constitution. Your Committee has felt reluctant to change or suggest any changes in that language, particularly in this clause, because it has already been under construction and that construction will be important at this coming autumn election. It has been held, I am informed, that this provision permits the submission of a referendum on a debt at the same time as a constitutional provision is submitted. Now, that is precisely the situation that will be met with in this State this autumn in case this amendment of our Committee is adopted. There is pending a proposed authorization for some \$27,000,000 more of new debts which will be submitted at the same time, and I am told by Mr. Clinton, who is very familiar with it, that it is highly important that there should be no delay in the submission of that referendum act. Well, now, inasmuch as this sentence has already been construed in that way, although I appreciate any suggestions as to English, I should much prefer to leave it alone and not to possibly create great inconvenience in such procedure by an attempt to change any part of it.

Mr. Griffin — Mr. Chairman, I think perhaps the paragraph beginning on page 2, line 24, down to line 3 of page 3, might bear a little explanation. I confess it is not altogether clear to me how if, say, two financial bills were passed by the Legislature, how they could be submitted at any other than a general election. The clause reads: "No such law shall take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast for and against it at such election; nor shall it be submitted to be voted on within three months after its passage, nor at any general election when any other law or any bill shall be submitted — any other law or any bill shall be submitted to be voted for or against." Now, how are you going to vote on your financial bill? A general election always succeeds a session of the Legislature. There will usually be some other bill to be voted for at that general election. How are you going to tell which one of these bills is going to be voted for at that election?

Mr. Stimson — That is a matter which is left to the Legislature which first authorized the debt. If you have examined the statutes containing provisions for referendums, you will find they are to be submitted at certain times and by certain forms, which is the provision which covers the question which you just raised.

Mr. Griffin — Well, at general elections in the past we have frequently had a number of constitutional amendments presented, also propositions for the issuance of bonds under a similar section of the old Constitution, and I am not aware that there was any prohibition in the old Constitution as to the submission of more than one bill. The effect of this would seem to me to be, with all due deference, would be to limit you to the presentation of one bill at each general election.

Mr. Stimson — The interpretation which I spoke of in answer to a question addressed to me by Mr. Quigg bears, I think, on what you have just asked. It has been construed that the submitting of this at the time any other law or bill was submitted did not apply to its being submitted at a time when a constitutional provision was before the people, that not being construed as a law or bill.

Mr. Griffin — I was going to ask this question — and General Wickersham has asked that the matter be suspended — but I would like to have the delegate think of this proposition as to whether it would not be well to reframe the language, so as to state precisely what the intention is and not leave it to adjudication.

Mr. Stimson — I will take that up again after recess.

Mr. Wickersham — Mr. Chairman, I move that we arise, report progress and ask leave to sit again in continuation of the special order at 2:30.

The Chairman — The question is on the motion of the delegate from New York, that the Committee arise and ask leave to sit again in continuation of the discussion of the present order. All those in favor will say Aye, those opposed No. It is so ordered.

(President Root resumes the Chair.)

The President — The Convention will come to order.

Mr. McKinney — The Convention has been in Committee of the Whole in the consideration of the special order of the day. On arising, it asks leave to sit again at 2:30, and reports progress.

The President — The question is on granting leave to sit again at 2:30. Those in favor will say Aye, contrary-minded No. The motion is agreed to and the leave is granted. The hour of 1 o'clock having arrived, the Convention is in recess until the hour of 2:30 this afternoon.

Whereupon, at 1 p. m., the Convention took a recess until 2:30 p. m.

AFTER RECESS

The President — The Convention will come to order.

Mr. Wickersham — I move that if, when the Committee of the Whole reaches the hour of 5:30 this afternoon, it shall not have finished with the consideration of No. 777, printed, General Order No. 35, which is at present under discussion, the Convention then take a recess until 8:30 this evening, and continue the discussion of that measure at that time.

The President — Is the Convention ready for the question upon the motion. All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Dow — Mr. President, I ask unanimous consent to make a motion.

The President — Unanimous consent is asked by the chairman of the Committee on Conservation to make a motion. The Chair hears no objection.

Mr. Dow — Mr. President, I move that the Committee be discharged from further consideration of No. 708, Print No. 773, that it be amended as indicated, reprinted, and recommitted to the Committee of the Whole.

The President — Is there any objection to discharging the Committee from further consideration of the proposition? The Chair hears none and it is so ordered.

The President — The Convention will resolve itself into the Committee of the Whole to continue the discussion of the special order of the day. Mr. McKinney will resume the Chair.

The Chairman — The Convention is now in Committee of the Whole and will resume the discussion of the Proposed Amendment which was under consideration at the time recess was taken. At the time of the adjournment the gentleman from New York had the floor, and the Chair will now recognize him.

Mr. Griffin — Mr. Chairman, that is for the purpose of asking a question, and I think it might be well for the gentleman to make the point clear, which is embodied in the question.

Mr. Stimson — Mr. Chairman, I had just been telling Mr. Griffin privately that the provision to which he called attention is in its present form because it is the form of the old Constitution. It happens to be italicized in the amendment merely because it has been transposed in its position in the section in reference to other sentences. The language of the sentence is, however, the old law, which has been in the Constitution hitherto. As I explained in answer to another question from Mr. Quigg, it, the Committee, did not and does not recommend any change

in the English because the sentence has already been construed in previous cases. And as that situation is likely to come up this fall, the Committee thought that it would be inadvisable to make any change in the language of that section.

Mr. Griffin — I desire to thank the gentleman for the explanation and I only insisted upon it in order that it might be spread upon the Record. The language to which objection was taken, it appears, is in the old Constitution, but in the new amendment it has been transposed from its former place to a position somewhat in advance of where it stood in the old Constitution.

Mr. Beach — Mr. Chairman and members of the Committee of the Whole. I have so far refrained from saying anything on the floor of this Convention because, not being a lawyer, and the questions so far under discussion having been clearly legal questions, I have not felt that I could add any light to the subjects discussed. But when it comes to matters of finance, and especially of bonds and the issuing of bonds, they happen to be questions which have come before me in my daily business for the past ten years, and I feel that if I can throw any light upon the subject before us, it is my duty to do so. In taking into consideration this question of the bonded indebtedness of the State, the very first thing that rivets our attention is wonderment at the succession of financial errors made by our legislators and the members of our Constitutional Conventions which have resulted in the excesses in our sinking funds, and the unnecessary taking from the pockets of the people of the enormous sum of \$28,000,000. We should not marvel too greatly at this, however, when it comes to a question of sinking fund bonds or, for that matter, any kind of bonds. It is a question about which the people as a mass have very little knowledge because out of our 10,000,000 of population but a very small proportion are bondholders. The dense ignorance which prevails upon this question is fairly well illustrated, although the story is somewhat overdrawn, by a campaign incident which is said to have occurred in New York city. It seems that a Republican orator was being transported late in a heated campaign up the East Side of New York, stopping at a street corner and delivering his address and then being transported to the next meeting place which had been advertised. It so happened that when he arrived at one of the squares which had been advertised as a meeting place he found it already occupied by an orator of another party who was standing on the tail-end of a cart busily engaged in haranguing the assembled crowd. Notwithstanding the competition, the automobile stopped and the speaker rose to his feet and in order to attract the attention of the crowd began his address with a question: "Why is it," he

shouted, "Why is it that when this great city of New York comes to borrow money on bonds it has to pay a greater rate of interest than Boston? Why is it that even some of the little hamlets in New England when they issue bonds can float them at a less rate of interest than can the city of New York? I will tell you what the reason is. The reason is —" but history fails to record what he thought the reason was, because just at that moment the other speaker, seeing that he was losing the crowd, broke in with "What do youse working people know about bonds? What do youse know about the 6-20s and the 7-30s and the 10-40s? I will tell youse what youse know about that. Youse know that you gets up at 6:20 and you goes to work at 7:30 just so that fellows like that man in that gas buggy over there can get up and have his breakfast at 10:40." Now, one reason why bonds, the question of bonds, is so little understood is because the growing policy of providing capital expenditures at the expense of future generations is comparatively a new one. In my business lifetime the State of New York has changed from a condition where it had practically no bonded indebtedness to one where the people are staggering under a load of \$186,000,000 of bonded indebtedness, with more to come; and the task of issuing the different blocks of bonds which have gone to make up this indebtedness — owing to the fact that the Legislature is a constantly shifting body in regard to its membership, these problems have come before each Legislature practically each time as a new problem and the fearful and wonderful manner in which the several Legislatures have tried to solve these problems is illustrated in the statement which was submitted to this Convention by the Comptroller at the request of Senator Wagner, and which lies upon our desks as Document No. 18. This statement shows that in not a single instance has the plan provided for contributions to the sinking funds been either scientific or practical, and in nearly every instance has resulted in excessive and unnecessary taxation; and we should need no further illustration to show us that sinking fund bonds are wrong in principle and burdensome, and if this particular clause which we are discussing at this time should become incorporated as a part of the Constitution, no more sinking fund bonds could be issued. The question very naturally arises, why have serial bonds so suddenly found favor, and, if sinking fund bonds are so pernicious, why were they ever favored? There is a good and valid answer to that question. Glancing back at financial history, we find that for a period of forty years, beginning with the close of the Civil War, there was a constant and steady depreciation in the price of money. Municipalities, States, the Federal government, issued bonds in the late sixties and the

early seventies which bore 6 per cent., and, in some cases, 7 per cent. interest. The bond issues which succeeded those bore continually less rate of interest; 5 per cent., 4 per cent., 3 per cent.; and the financial mind became obsessed with the idea that the interest rate was going to continue to go down. The result of this constant decrease in the interest rate was that large investors found that when they bought long-term bonds they invariably increased in value on their hands and as this continued over a period of nearly forty years with a constant upward tendency it made long-term bonds in great demand, but in 1907, in the fall of 1907, without any well-defined reason and suddenly, the bottom dropped out of the bond market and bonds as a whole have continued to decrease in value since that time, and apparently the end is not yet. This sudden depreciation and continued depreciation in the price of bonds caught all large investors and the loss occasioned by this depreciation has given the investing public a shock from which it will be slow to recover. But drastic as the treatment has been, it has served to thoroughly teach the lesson that 100 years or 50 years is too long a period for any one to forecast what the interest rate is to be, and it has schooled investors to believe that a debt secured by serial bonds which are to be retired annually and run for not too long a period is the very best possible kind of security. Some question has been raised by those who seem to be jealous of having the Legislature deprived of any of its rights or privileges, that we should not confine the Legislature to serial bonds, but should leave it to their discretion to issue sinking fund bonds, should they see fit to do so; but the people who argue in this way seem to me to fail to take into consideration that practically every clause in the Constitution is a limitation upon the Legislature and every single clause in that Constitution is put there for some good reason. And it seems to me that the past record of our Legislatures cries out in a loud voice that some restriction is necessary. As an illustration I want to call your attention to the manner, the method and the terms by which our Legislatures provide for the \$21,000,000 of the canal debt which bears 3 per cent. interest. The first issue of these bonds was of but \$2,000,000 and they only had to run eighteen years. They were issued on the 1st day of January, 1905. On the 1st day of January, 1905, all bonds were selling at practically the maximum price of an upward tendency of forty years, and just let us pause for one moment and see what kind of a State this was that wanted to borrow money. In a nation which holds such States as Texas and California, the area of the State of New York is not particularly striking, but you could take the whole nation of Belgium and lay it down on the State of New York four times over, and

then have 4,000 square miles of territory left uncovered. The 49,000 square miles which comprise the area of the State of New York contain within their borders the second largest city in the world. It was gridironed by railroads; divided into productive and fertile farms, dotted with cities, industrial cities — factory whistle answered factory whistle, and tall chimneys and giant smoke stacks looked down upon a prosperous and thriving people, and this prosperous, thriving, industrial people were standing shoulder to shoulder with the sturdy farmers and pledging the credit of the great Empire State to the payment of the debt at its maturity. Not only was the Comptroller able to sell the bonds at par as the law required, but so eager were the people to buy them that they paid an average price of \$1,023 for each \$1,000 bond, and they were 3 per cent. bonds. In the years 1906, 1907 and 1908, there was an aggregate of 11,000,000 more of these bonds issued and the Comptroller was still able to sell at par, although the 5,000,000 issued in 1907 just skinned through, because it was sold at exactly par; but in 1909 a new situation confronted the people — confronted the Comptroller. The price of money had gone up and no one wanted any 3 per cent. bonds, no matter what the security. The Constitution at that time did not permit the Legislature to increase the rate on bonds authorized, the interest rate on bonds authorized but not issued, so, in order to raise this money, they performed — and not having one of Judge Clearwater's picturesque phrases to describe it, I shall have to characterize it as acrobatic finance — the Legislature of 1909, in order to raise this \$10,000,000 which was needed for the canal improvement, passed a law remitting to the insurance companies, the trust companies and savings banks the 1 per cent. tax, the 1 per cent. franchise tax, to the amount equal to 1 per cent. of the par value of all New York State bonds bearing 3 per cent. interest held by those several institutions. This of course made those bonds practically 4 per cent. bonds, so far as those institutions were concerned, and the Comptroller had no trouble in selling them at a trifle above par. Now, in 1909, a constitutional amendment was submitted to the people which permitted the Legislature to increase the rate of interest on bonds authorized but not issued, and the subsequent issues of bonds were issued at a rate of interest in conformity with the money market. Now, the point I wish to make is this: The Legislature of 1909 probably were justified in remitting that 1 per cent. franchise tax on the \$10,000,000 worth of bonds they had to sell to prosecute the canal work. But there was no possible justification for their including in the remission the \$13,000,000 of bonds already issued. Those \$13,000,000 of bonds not only were already issued, but, to use a

phrase coined by one of Wall street's most famous men, "They had been digested." That is, they were out of the hands of the syndicate which purchased them and in the hands of investors who expected to hold them to maturity, and they had no right or reason to expect any further return on them than the 3 per cent. interest which those bonds bore on their face. This action will have taken from the revenues of the State of New York before those bonds matured half of 1 per cent. on \$13,000,000 annually for forty years and will amount to \$5,000,000. This law was passed by a Republican Legislature and being a Republican myself, as the minister said when he sat on the tack, I will not dwell upon this point; but I want to go forward to the Legislature of 1913, just to show that when it comes to a matter of State finances, or questions of State finance, they all look alike to the Legislature, no matter what its political complexion. That was Legislature of 1913, which the delegate from New York, ex-Speaker Smith, in his remarks on the apportionment measure in a speech which bristled with wit and repartee, eloquently described to us as a benevolent Legislature. The Legislature performed a most remarkable feat. By Chapter 357 of the Laws of 1913 they remitted to those favored institutions a further remission of their franchise tax of one-half of 1 per cent. more on all the 3 per cent. outstanding bonds of the State which they might hold and a half of 1 per cent. on all of the bonds bearing over 3 per cent. and not exceeding 4 per cent. Now this meant that it took from the revenues of the State a half of 1 per cent. on the whole \$23,000,000 of 3 per cent. bonds and a half of 1 per cent. on the \$48,000,000 of 4 per cent. bonds, and by the time those bonds had matured that decrease in revenues would have amounted to \$14,000,000, with absolutely no consideration for the State. That law was passed and it was signed by the Governor on April 24th and May 3d the Legislature adjourned. On June 16th, however, it reconvened in what I notice on the backs of the law books is called an "Extraordinary Session," and from all that I recollect they performed during that session it was well named. But the very first act of this extraordinary session was to repeal the law passed in April. It was passed on June 16th and signed by the Governor on June 17th. Fortunate it was for the State of New York that some one recognized the pernicious effect of this law before it became operative. Although it was repealed it does not alter the fact that a law taking \$14,000,000 from the State's coffers without consideration was passed by both Houses of the Legislature and signed by the Governor.

Mr. A. E. Smith — I desire, for the purposes of the Record, to inform the gentleman that we discovered that ourselves and we

attempted to repeal it in the regular session and thought we had done so, but after the Legislature had adjourned, in some mysterious way, we were unable to find an entry on the Journal of this House showing that the bills had passed this House repealing it, although it was pretty generally believed in the House that the bills had passed.

Mr. Beach — I am very glad to hear the gentleman's explanation. I am not finding any fault with anybody in this matter. I merely want to call the attention of this Convention to this fact, that in matters of financial legislation our legislators have habitually failed to give to such matters that serious consideration, that careful attention and scrutiny, which the spending of millions of dollars of other people's money requires, and I believe that the people of this State will be just as much justified in saying to the Legislature just what kind of bonds they may issue as they would be or are in fixing the period for which the debt may be contracted.

Mr. Marshall — First of all, I desire to extend congratulations to the members of the Finance Committee for the thorough and admirable piece of work which they have brought to our consideration and which will place every citizen of the State under lasting obligations to them. I desire, however, to call to the attention of the Committee, and of the House, a situation which may require an amendment to Section 4. That arises out of the fact that at the last session of the Legislature there was enacted Chapter 570 which makes provision for issuing bonds to the amount of not to exceed \$27,000,000 for the improvement of the canals of the State — terminals, among other things. That provides for an election to be held on November 2, 1915, in other words, for a referendum pursuant to the terms of the present Constitution by which the people are to determine whether this law is to become effective. That referendum is to be acted upon at the same time when the Constitution which we are to adopt here is to be voted upon, as it is hoped. If it is adopted at the same time as the Constitution is adopted, it naturally would be controlled so far — as there is no language to the contrary in the finance article that we may here adopt, under the provisions of the present Constitution which involves the duty to issue these bonds for a period of fifty years and the creation of a sinking fund. It has been demonstrated entirely to the satisfaction of every thinking man that the present situation is intolerable. That has been made perfectly clear by the lucid remarks of the chairman of the Committee and the interesting additions which have just been represented by Mr. Beach. We should, therefore, take such action that by no possibility can any question rise with respect to these \$27,000,000, if the people should decide upon their issuance at the next election. Now,

everybody knows that capital is very timid, and that if this vote should take place in favor of the issuance of these bonds and an attempt were made to market those bonds, unless every doubt on the subject was silenced there might be difficulty in disposing of the bonds and marketing them, especially if they are to contain the provisions which we seek to have inserted hereafter under which all bond issues shall be of a serial nature. In order, therefore, to silence any doubt any investor may have, in order that there may also be no question and that the serial provisions which are now under discussion may be applicable to bonds that will be issued, if the people vote in favor of authorizing \$27,000,000 of bonds to be issued, I make the following — or propose the following amendment to Section 4: On line 19, page 3, after the word "debts" strike out the word "hereafter"; after the word "State," in the same line, insert the words "after November second, nineteen hundred and fifteen;" on line 21, page 3, after the word "contracted" insert the words "irrespective of the terms of such authorization." The effect of these amendments would be that the Constitution would then provide that all debts contracted by the State after November 2, 1915 — that would be the date of the referendum — pursuant to an authorization therefor, heretofore or hereafter made, and each portion of any such debt from time to time so contracted, irrespective of the terms of such authorization, shall be paid in equal annual instalments and so forth. The effect of that would be that by no possibility could there be issued bonds with the sinking fund provision after the adoption of this referendum, even though time enough were left between the date of the election and the 1st day of January, 1916, when the new Constitution goes into effect. It is conceivable that between November 2, 1915, and January 1, 1916, but for such a provision, there might be contracted by the State a debt of \$27,000,000 under the present referendum clause.

Mr. Lincoln — Do you contend that the State would contract such a debt between the day of election and the date of the official canvass of the vote?

Mr. Marshall — It is conceivable. I don't know. There is a possibility of it. We don't want any doubt about it. But the more important point I want to make is that there shall be no reason on the part of any investor who would undertake to purchase bonds which would be issued under Chapter 570 of the Laws of 1915 to doubt the validity of those bonds if they contain this provision with regard to annual payments instead of the provision which is now in the Constitution and which is referred to in the act, as to the issue of those bonds on the sinking fund plan; and for that reason I have inserted, or propose to insert, the words, if it meets with the approval of the House, that this new system shall

apply to all debts contracted after November 2, 1915, pursuant to an authorization therefor, whether made before January 1, 1916, or after January 1, 1916, irrespective of the terms of the authorization. That would practically read into the referendum of the people, which will take place on the next election day, the terms of the Constitution and the conditions of the Constitution, as we are now preparing and drafting it.

Mr. Clinton — The doubt which suggests itself to my mind is this: The referendum necessarily drawn in compliance with the present Constitution seems to annex the assent of the people to the issuance of the bond, and that they shall be issued under certain conditions which are those imposed by the Constitution, unless the present section of the Constitution is amended. The question which I desire to ask, and which calls for your opinion, and upon which we all place the greatest weight, if that be so, in your opinion, would the words which you propose to insert, "after November 2, 1915," and the words "irrespective of the terms of such authorization," operate to leave in force that portion of the referendum which authorizes the issue of the bonds?

Mr. Marshall — My answer is that I have no doubt that the result of the referendum would be an authorization of the issuance of the bonds. There is nothing to prevent that. The act is valid, as it has been enacted in strict compliance, as I read it, with the present terms of the Constitution; and if nothing is said in Section 4 as now proposed to be adopted, undoubtedly the effect of the referendum would be to authorize bonds on the sinking fund basis only. Now, the Constitutional Convention submits to the people concurrently this proposal, that all debts contracted by the State after November 2, 1915, which would, of course, include any debt which would be incurred pursuant to this referendum, must be on the serial bond basis. And this provision also contains the words "pursuant to an authorization therefor heretofore or hereafter made." Now, in order that we may know what authorization is made, and what the effect of the authorization may be, and whether it shall be an authorization on the serial basis, or on the sinking fund basis, with the amendment which we propose we would then have that authorization defined — "Pursuant to an authorization therefor heretofore or hereafter made, irrespective of the terms of the authorization."

Mr. Sears — If our Constitution which we propose is adopted and goes into effect on January 1, 1916, how can it have any effect upon a contract which may be made between election day and the 1st of January? In other words, won't this necessitate making the Constitution effective on election day and changing the general scheme which is generally in effect in such cases?

Mr. Marshall — The idea here is that it is a declaration clearly made by the Constitutional Convention and by the people concurrently with the action upon this referendum of their policy in regard to these very bonds, and while the Constitution goes into effect on the 1st of January, 1916, the action taken by the people at that time would be such notice to any intending purchaser that he would not for a moment enter into a contract; but the more important thing I have in mind is that when he does subsequently enter into this contract, pursuant to this referendum, it is with the expressed understanding that the authorization herein intended shall be authorization, irrespective of its original terms, to provide for the issuance of serial bonds, and serial bonds only. That is the value of it and not so much as to whether or not a contract shall be entered into between now and the 1st of January, because I agree with Mr. Lincoln that the chances are negligible as to whether or not any bonds can actually be issued in that time.

Mr. Lincoln — I desire to call Mr. Marshall's attention to the fact that the official canvass cannot possibly be made of the vote upon this referendum before the first or second week in December, and in addition to that, it is required by law that there be an advertisement, so that it is a physical impossibility for any bonds to be issued under this authorization, if passed, prior to January 1st.

Mr. Marshall — I agree with you that there is slight, if any, danger of that, but the point I am making is that it is important for the purpose of silencing any doubt on the part of a purchaser of these bonds under chapter 570 which contain this reference to the sinking fund provision, that that is to be deemed superseded by this constitutional declaration as affecting any authorization whether made prior or subsequent to the going into effect of the Constitution — that the authorization shall be on the serial plan.

Mr. Cullinan — Mr. Chairman, I desire to say a few words in connection with the sale of the first canal bonds of the several first issues, in reply to what Delegate Beach has said here to-day. Now, when bonds are to be sold, I have discovered that you have got to get buyers, and you have got to sell something that the buyers want. Now, when these bonds were originally sold, there was then a demand for long-term bonds. Economists tell us that as countries grow older and grow richer, money grows cheaper, in a certain sense, and the rate of interest drops, and there was then a demand by all buyers for long-term bonds, and the brokers, or those dealing in the securities, substantially told the different committees appointed in connection with canal improvement, and the committees of the Legislature, that serial bonds were not wanted. Now, we see that when we commit ourselves to a financial plan, that ought to be to a certain extent flexible, because

when you need the money you have got to seek the people who have got the money and give them what they want, or else you won't get the money. That is the explanation that I desire to make in justification of the conduct of those connected with canal improvement, and the action of the Legislature with reference to the sale of those lands.

Mr. Marshall — Mr. President, before I sat down, I had desired to ask a question of the Chairman of the Finance Committee, in order that we might ascertain the views on this subject of the Finance Committee, because of the great importance of the fact that the public should know, if these additional bonds are issued, what the effect upon them would be of this provision which has been proposed, so far as the Committee has thought of the subject.

Mr. Stimson — Mr. Chairman, the Committee on Finance went over this precise question with reference to the tendency which has been suggested here by Mr. Clinton and Mr. Marshall, and it was our purpose as it was their purpose that there should be no doubt that the bonds to be issued under that referendum this fall for \$27,000,000 should be bound by the terms of this to be serial bonds, and not sinking fund bonds, and it was our opinion, in view of the conditions which Mr. Lincoln has called to the attention of the Committee of the Whole — namely, that in view of the canvass which will not be completed until December, and the length of time necessary to advertise the bonds after that, and finally the immense moral effect of a declaration by the people in favor of this plan — that there was no danger whatever of the bonds being issued in any other way. Now, since the question has been brought up here, I feel that the Committee has no pride of opinion in regard to its own language. It merely wishes the Committee to know that it reached that conclusion after very careful consideration. And, above all things, I believe that very great weight is due, in canal matters particularly, to any suggestion which may be offered by Mr. Clinton, on whose shoulders has lain the burden of these matters for so many years, and to whom the people of this State owe a very great debt in regard to these particular matters. And I should attribute great weight to any modification aimed in the direction of making this perfectly clear which Mr. Clinton says would improve it, in his view. It seems to me there is no legal difficulty about it whatever. The only thing is to make our united purposes perfectly clear. It means in substance and effect, as I understand the provision now suggested by Mr. Marshall, particularly the one made in line 21 — it would amount in point of law to a declaration in this part of the Constitution that this provision should take effect on November 2d, regardless of what the general provision in the final clause of the Constitution may be.

Mr. Wiggins — From the statement which you have made and from the explanations which have been made by others with respect to this amendment, it seems to be one which anyone can accept without reservation. It seems to me to be a measure which will work for the great good of the people of this State. In reading it, however, I have had this thought come to my mind with respect to that portion of the amendment at the foot of page 3, in which it says: "No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by general laws, which determination shall be conclusive." Now the feature of that which I have in mind arose by reason of your explanation this morning of the probable length or term of life of the improvement when you illustrated by a road. In one instance you referred to a "water-binder" road, whatever that may be; you spoke of that, that the term of the life of it would be for five years and a bituminous binder would be ten years; but your explanation — I am wondering whether you had it in mind — made no reference to the manner in which you shall issue bonds for that improvement, where, as an illustration, you buy five miles of road which is a permanent improvement which will last forever and which may perhaps require the construction of a concrete bridge, the probable life of which might be twenty or twenty-five years; or that you might go through a forest and cut down a large number of trees which might be very valuable to the owner and cause a greater investment of money by reason of that — now, have you had in mind this question, shall the life of that road be determined by the average life of the improvement? Will you be able to divide the amount expended for that improvement into those parts which by general laws the Legislature may say will last for twenty years, another which will last for ten years, another which will last for five years, or will we have to pay for the entire improvement within a period of five years because it has a surface which is referred to as a water-binder, or because we shall have a surface referred to as a bituminous binder? May that be taken care of under this provision?

Mr. Stimson — That was a matter which the Committee also discussed at considerable length and it was one of the main reasons why it left this to the determination of the Legislature by general laws, indicating merely the policy in general which was to be adopted and providing that the determination of the Legislature should be conclusive. We had under consideration various other more detailed and more particular ways, by which a certificate of an engineer might be required, and the objections

which have been submitted by Mr. Wiggins were among the objections which caused the abandonment of those methods by the Committee, in order that the entire subject might be left to the Legislature, with a flexibility which the complication of the application of that general principle seemed to require.

Mr. Wiggins — With that explanation, with which I am in entire sympathy, do you think that the language employed is sufficiently flexible to permit the Legislature to say that a thousand dollars, to use arbitrary figures, of this amount to be raised, may be for a period of five years; another thousand, by reason of the length of the improvement, such as a culvert, may be for twenty years; and another, by reason of the purchase of land, for example, might be for forty years; and another, such as the substructure of the road, might be for fifteen years — would this language permit the Legislature to determine that those bonds for that improvement might be issued in those varying terms?

Mr. Stimson — I think so, particularly in view of the fact that the decision of the Legislature is expressly made conclusive and there is no danger that the validity of the bonds might be attacked on the ground that they had made a mistake.

Mr. Wiggins — The words which I had in mind were, “No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work;” what is the “work” and what is the “debt?” That is the question.

Mr. Stimson — That does not prevent the Legislature from specifying and saying that one debt shall be for one part of it and another for another. It expressly authorizes doing that.

Mr. Clinton — There is a motion before the Committee made by Mr. Marshall, which I rise to second. It suggests itself to my mind that the debate for the present should be devoted to that amendment. The occasion of that is that the debate seems to be drifting off entirely to other matters.

Mr. Austin — In a very few words I wish to express the hope that the amendment suggested by Mr. Marshall will not prevail, for two reasons. In the first place, if Mr. Marshall is familiar with the terms of the Referendum Act, he knows that there is no possibility of a terminal bond being issued before the first of January, because they cannot be issued until the work has been contracted for, sums of money become due to contractors thereon, and appropriations have been made by the Legislature, which does not convene until January, to pay the contractors, and that appropriation authorizes the issuing of all or a part of the bonds which are approved by the referendum of the people. Consequently that fear is absolutely groundless. The second reason why I hope it will not prevail is because, to my mind, no language

could possibly be plainer that that which is incorporated in this amendment. I am in thorough sympathy with what Mr. Marshall says. I do not want any more doubt about the meaning of this section than he does, but what does it say, bearing in mind that it takes effect the first day of January, 1916, if approved by the people? It says, "all debts hereafter contracted by the State, pursuant to an authorization therefor, heretofore or hereafter made." Now what is the referendum, if approved by the people in November, 1915, if it is not an authorization heretofore made?

Mr. Marshall — Is it not a fact that under chapter 570 of the Laws of 1915 the authorization for the issuance of \$27,000,000 of bonds therein contained, was upon certain terms which involved the issuance of sinking fund bonds?

Mr. Austin — Absolutely.

Mr. Marshall — Now, in order to avoid any doubt in the mind of a bond purchaser, who is known generally to be a most timid individual, and of the lawyers who advise him, who are known to be even more timid than the average bond purchaser, is it not desirable, or at least is it not useful, to say that, in addition to the language which you have just quoted — "pursuant to an authorization therefor" — that it shall be irrespective of the terms of such authorization that the serial plan shall become applicable? We are desirous of having no doubt upon that subject, you as well as I. Mr. Clinton, who is perhaps more interested in the success of the canal than any of us, is anxious that there shall be nothing to prevent the sale of these bonds without a new referendum in the event that the people in November vote favorably upon that referendum. Would it not therefore be the part of wisdom or caution to silence any possible doubt in the minds of the most finicky bond purchaser or his lawyer?

Mr. Austin — It is advisable to do that if it is wise to say that glass is colorless. Now if a thing is absolutely clear, to my mind there is no use in trying to make it any plainer; this section now says that all debts contracted by the State pursuant to an authorization therefor heretofore made, January 1, 1916, shall be issued in a serial form. I don't wish to discuss it at any length but I wish to express my opinion that you cannot with language make it any clearer than that.

Mr. Clinton — Are you entirely satisfied, Mr. Austin, that the fact, the legal construction of this section would be such as you are satisfied it would be? Is there sufficient reason, in view of the opinion of other lawyers as to the possibility of doubt, for making the language perfectly clear?

Mr. Austin — I have no desire, if you permit me to answer the question, to impress my views upon anybody else. Others may

vote as they wish on this proposition, but I cannot refrain from stating what I believe to be the case, and I have not any more doubt than I have that I am standing on my feet here at this moment that if this amendment is adopted in the present form the \$27,000,000 worth of bonds could not be issued other than as serial bonds.

Mr. Clinton — Have you any doubt upon the other question suggested, that without this amendment the validity of those bonds would be affected?

Mr. Austin — I have not the slightest doubt or thought that the validity of the bonds would be affected.

Mr. A. E. Smith — Mr. Chairman, unless the referendum contains language to the contrary, because of a law that was passed in the recent session of the Legislature the Comptroller will be obliged to replenish the general fund with \$3,600,000 that was taken out of it by special bill this year and that must be done between election day and the first of the year; that is, the \$27,000,000. The law requires that the Comptroller take \$3,600,000 of that \$27,000,000 and put it into the general fund, because the general fund was drawn on at the last session for that amount.

Mr. Wagner — To the extent to which it is exhausted.

Mr. Cullinan — That money was taken out to pay balances due on contracts in progress on the Barge canal and would be completed within some specified time?

Mr. A. E. Smith — Well, that was alleged.

Mr. Cullinan — Alleged?

Mr. A. E. Smith — Yes. Very strongly disputed and no facts were ever brought forward sufficiently strong to convince me, although I was in a receptive mood.

Mr. Lincoln — Do I understand you to believe that this bond issue could not be had between election day and the first of January, irrespective, Mr. Smith, whether or not they have to resort to this fund when they raise it? The question is that, can the bonds be contracted?

Mr. Smith — It would be my opinion unless there was something to the contrary in the referendum that the Comptroller could sell them right away, especially to the extent of \$3,600,000.

Mr. Lincoln — Whether or not he knew the referendum had been passed?

Mr. A. E. Smith — He would not have to wait until the first of January to find that out.

Mr. Lincoln — Does not he have to wait until it is sufficiently canvassed?

Mr. A. E. Smith — They have been known to be sufficiently canvassed in two or three weeks.

Mr. Lincoln — By the State Board of Canvassers?

The Chairman — Mr. Smith has the floor. The gentleman will address the Chair and ask permission.

Mr. Brackett — Mr. Chairman, I would like to ask in the most respectful way if the gentleman thinks the Comptroller would be zealous to find ways and means of avoiding the provisions of the Constitution by hurrying the issue of bonds?

Mr. A. E. Smith — No, I don't think he would. But on the other hand I think he would be performing his full duty if he obeyed the law which requires him to the extent of that \$3,600,000 to replenish the fund.

Mr. Brackett — That can be done before the second day of January?

Mr. A. E. Smith — Well, the other can be done, too. I understand that we are trying to fix it here so that something cannot happen. In relation to section 4 of the Proposed Amendment, my rising was to debate Number 4, or to make a suggestion with regard to the language on line 15, section No. 4, page 2; the words "For some single work or object,"—

Mr. Stimson — I wanted to ask the delegate if he did not think it would be better to act on the amendment brought up by Mr. Marshall in the regular procedure? Your question has nothing to do with that amendment.

The Chairman — The question is on the amendment submitted by the delegate from New York, Mr. Marshall. The Clerk will read.

Mr. Hinman — Mr. Chairman, with reference to that Proposed Amendment by Mr. Marshall, while I am in full accord with the purpose, because I believe there should not be the slightest doubt with reference to the matter, it would seem to me that rather than encumber this section with any language of this kind, and in order that the matter might be expressed in sufficient terms to be perfectly clear, not only as to the validity but as to the fact that this is to cover the proposed \$27,000,000 of authorization, I believe the amendment should be taken care of in connection with that article of the Constitution which deals with coincident submission to the people of proposals by the Legislature rather than proposals by the Convention. I have not prepared anything which I would consider formal language but it will present however the idea which I have in mind, and I desire to offer this as a suggestion to the Convention, that this be added in connection with the language which has been proposed in relation to the subject: "If the people at the general election held in the year 1915 approve chapter 570 of the Laws of 1915 relating to issuance of bonds for the construction of canals the same shall be final and conclusive,

notwithstanding the amendment of Article VII, Section 4, of this Constitution, except that irrespective of the terms of such Chapter 570 the debt so authorized shall be paid in equal annual installments in conformity with such Article VII, Section 4, as amended." I believe that would clear up any doubt in the mind of Mr. Clinton as to the language. It would show that irrespective of the terms of Chapter 570 the provision of Article VII, Section 4, must be complied with so far as relates to equal annual installments.

Mr. Clinton — I do not quite understand the purport of Mr. Hinman's remarks and would like to ask him what assurance we have if we agree to this language without amendment that any such proposed amendment as he suggests would be introduced and adopted by the Convention. It seems to me that this is the time to take care of the matter. Subsequently if such a proposed amendment is brought in, and meets the approval of the Convention or even of the Committee of the Whole, then this language, the language of Section 4, can be changed.

Mr. Hinman — Mr. Chairman, that seems to me a very sensible suggestion. I have no doubt the Committee would propose such an amendment, but in order that there shall be no doubt at this time, subject to the Revision Committee, I see no reason why the proposal of Mr. Marshall should not prevail. But as Chairman of the Committee on Future Amendments I am glad to receive any suggestions from this Committee or Mr. Clinton as to whether it would desire or would be desirable for the Committee to propose such an amendment.

Mr. Clinton — If it were not for the idea which I suggested in my question to Mr. Hinman, I should be willing to withdraw, as far as I am concerned, my advocacy of Mr. Marshall's amendment because I prefer the suggestion made by Mr. Hinman; but I think the proper course is to provide for this case by amendment now and then you can have the Committee on Future Amendments bring in its proposed amendments, which I really prefer to this one, and adjust the difference.

The Chairman — The Clerk will read the proposed amendment.

The Secretary — Page 3, line 19, after the word "debts" strike out the word "hereafter"; after the word "state" insert the following: "After November 2, 1915"; page 3, line 21, after the word "contracted" insert "Irrespective of the terms of such authorization."

The Chairman — The question is on the amendment as read. All in favor of its adoption will say Aye. Opposed No. The Ayes seem to have it. The Ayes have it, and the amendment is adopted.

Mr. A. E. Smith — Mr. Chairman, on page 2, line 14, I would suggest to the Convention that there be some change made in that language. It reads, "unless such debt shall be authorized by law for some single work or object,"— I have an idea that the word "purpose" would be better than "work". "Some single purpose or object" and I will tell the Convention what I have in mind and why I think the change is desirable. There has been a conflict of opinion among the lawyers in the Legislature and with the Attorney-General, as to whether or not the Legislature could authorize or could submit to the people a bond issue under the general term of "construction" or whether it would have to be issued for a single work, as the Constitution reads. In 1911, there was prepared, and I believe it passed one house, a proposal to submit to the people a proposition to bond the State for some twenty or twenty-five million dollars for construction. Included in that would probably be the reconstruction of the Capitol, the balance of the construction work on the Educational Building, some of the buildings at the State Fair, some of the state hospitals, notably, I believe, Mohansic, and there was, as I say, a great conflict of opinion as to whether you could submit an amendment, or a referendum or not, it not being for a single work, as some held, and others held that "construction" was a single work. Now this may not seem a very important thing at this time, but I want to assure the Convention that it is, and that in the next four or five years, because of the present finances of the State, it is my belief that something will have to be done to bond the State for the alteration, construction and repairs of existing state hospitals and state institutions. Particularly is that so of the prisons. Now, there has been a widespread demand throughout the State for a number of years back to do away entirely with Sing Sing as a prison. Everybody believes that it should be done. But the State has never been in that position financially that it could undertake the work. It was estimated by the State Architect and by the Prison Commission that a model prison, that is, up to date, to take the place of Sing Sing, aside from the site, would cost at least \$1,900,000. Everybody knows that when the State Fire Marshal came into being in 1911, he was the first individual in the State that ever attempted to exercise any jurisdiction over State buildings, and he found some of the State's own buildings in a very deplorable condition from the standpoint of safety from fire. Unquestionably a great many of them must be remodeled. That they should be enlarged goes without question. It is something that the State of New York has abundant reason to feel ashamed of. We have done so little to give the proper care and proper attention to the unfortunate people that it is the policy of the State to take care of. The prevailing condition in the hospitals and in the institutions is

tending to defeat the very purpose for which they are maintained by the State. So I say we have got to come to a bond issue for construction, repair and equipment. It is very unfair to the taxpayers of this year and the next to ask them to go down in their pockets and build institutions for the State of New York that are to last for years and years to come. I cannot help thinking when I look out the windows of this Capitol, on this Educational Building — I cannot help thinking but that it was a very grave mistake to spend six million dollars that the building cost for construction and equipment and to take it bodily from the surplus of the State and the income and revenue of three or four years. In 1907, when Governor Hughes came to the Governor's chair, there was in the treasury of the State a surplus of \$15,000,000. It is safe to say that four and a half of that at least was taken bodily out of the State's surplus to build that building; something that is destined to last for hundreds of years to come and should have been spread over all the other years. Now, in order that there may be no difficulty about it; in order that there may be no technical question raised, provided the bond issue is meant to extend to the construction of more than one particular kind of building, this should be amended and the words "single work" taken out, and the word "purpose" or some better word, which somebody can suggest, put in its place.

Mr. C. A. Webber — I would like to ask if this construction of the phrase at the top of page 3, that only one such bill can be passed in any one year, or can be submitted to the people, as I read it, only one such bill can be passed in any one year?

Mr. A. E. Smith — Yes, but this all could be comprehended in one bill, were it not for these words "single work."

Mr. C. A. Webber — That is what I wanted to make perfectly clear, that it has that effect, and it ought to be amended.

Mr. Stimson — I am very glad to answer the inquiry by Mr. Smith. It is because, in the opinion of the Committee, that there was no doubt about the meaning of "work or object," and that it had just the opposite meaning from what Mr. Smith is trying to give it, that we supported it. His proposition touches one of the fundamental points of policy about this whole section. As I tried to explain this morning, it is this Section 4, and this provision of Section 4, coupled with the provision to which attention has just been called by Mr. Webber, that has resulted for fifty years in the conservative policy of this State which has compelled the making of such improvements and repairs and construction out of the State's current income. Now, the Committee had that very carefully brought before it. The application was made before us on behalf of the State charities for a number of matters, particularly

to have the relaxation of this provision. We gave it careful consideration, because it was brought up by people of the utmost disinterestedness in their application, and it was on behalf of institutions which desired and deserved the highest care of the State. But we found that this policy had been, as I stated this morning, continuous; had been reaffirmed after careful examination during the administration of Governor Hughes, and it was the view of everyone who had made a careful study of it, that the best policy, the best fiscal policy of any commonwealth required a continuance of that policy — a continuance of the policy of constructing buildings, hospitals and other institutions, out of current revenue. If a situation does not arise of sufficient importance, involving enough money to make it worth while to submit it to the people of the State under the limitations of this provision, why, the chances are that the debt ought not to be incurred for that purpose. Now, to substitute the word “purpose” would be to open the door to the easy road to go into debt for all worthy objects which may come up and be desired by any advocates who can appear before the Legislature, and to have them submit anything in an indiscriminate manner to the people of the State. The success of the present policy has resulted, in the opinion of your Committee, from the fact that it could not be done in that way; that it must be submitted as a single object sufficiently important to be considered on its own merit and decided upon that alone, and that in that way, and in that alone, could the custom of making the necessary sacrifices from year to year to build these improvements be laid upon our people. Furthermore, an examination of the history of the different amendments that have been submitted, makes it clear that there is no hardship thus involved. It was suggested that there were so many of these things that they could not all get a chance, under this rule, before the people. That is not so, as will be found by an examination of history. The only debts that have been submitted to the people in the last fifteen years are those in relation to the canals; debts in relation to the highways, and one other debt for the Palisades Park, according to my recollection. Now, if the crying demand for the construction of additional buildings was of such a character as has been indicated, it would have been perfectly possible to have had it submitted in the intervening years in the way already provided by this law.

Mr. C. A. Webber — I have another suggestion that has occurred to me; the possibilities that might arise in the case of war. We have seen within the last year that England in the space of six months had to make a loan of five hundred million pounds; France and other nations had to make similar loans. Supposing

we were at war to-morrow, just after an election, or after a general election, we could not, under this law, pass a bond issue for a year, could we?

Mr. Stimson — Mr. Webber, you have only to turn to Section 3 of the Constitution which has not been amended and which is still in force, to find the emergency power of the State to make loans in the case of war. That is fully provided for outside of the restrictions of this provision. For the benefit of the Convention, I will read it to the Convention: "In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war," and provisions to that effect. That is entirely separate and distinct, and that power is not subject to any of these restrictions.

Mr. A. E. Smith — I am not particularly keen about this myself. I simply call this to the attention of the Convention. This is the time to make everything perfectly clear. Now, it was held, and it was held by men whom I regard as having some knowledge of the law, that you could not build more than one hospital under a referendum, because it was not a single work.

Mr. Stimson — I don't dispute that, Sir.

Mr. A. E. Smith — Well, I think that is wrong, and I also want the Record to show that I cannot possibly agree with the conclusion of the Chairman that it has been a wise and conservative policy of the State to build buildings that are to last for a hundred years out of current revenues and then construct roads that are to last five years out of bond issues. Now, if he wants the Record to show that as being his idea of conservative financial management of our commonwealth, he is entitled to do so, but I would like my opinion to stand alongside of his, to the contrary. I think that that is one of the gross absurdities of our financial system.

Mr. Hinman — I thoroughly agree with Governor Hughes in his message to the Legislature of June 20, 1910, when he said, in dealing with the finances of the State: "We build our State institutions and public buildings out of income. No private business would charge its income as does the State. I do not object to this policy so far as public buildings and institutions are concerned, for the demand for new ones, for betterments and improvements, is so great from all parts of the State that the necessity of providing for them out of income affords a check which, though irritating to many good citizens who would prefer still more rapid progress, is undoubtedly wholesome in its restraint."

The Chairman — The question is now upon the amendment to Section 4.

Mr. A. E. Smith — Do I understand that you were about to put the question on the amendment?

The Chairman — If the Committee is ready.

Mr. A. E. Smith — The amendment is to strike out on line 15 the word "work" and insert the word "purpose."

The Chairman — The Clerk will read the Proposed Amendment.

The Secretary — By Mr. A. E. Smith: On page 2, line 15, strike out the word "work" and insert in place thereof the word "purpose."

The Chairman — All in favor of the adoption of this amendment will say Aye, opposed No. The Noes have it. The amendment is lost.

Mr. Wiggins — Since I made the inquiry which I did of Mr. Stimson, I have tried to read that paragraph at the foot of page 3 so as to obtain some relief for the thought which I have in mind, that it will be a great mistake to pass the bill in the shape in which it has been drawn. I hope I am mistaken about it, but it seems to me that it is going to fasten upon this State this particular method of paying for a highway, and I am going to use that one illustration. The language as used says that "No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted." Now, that means that if a State highway must be paid for in whole within a period of five years or ten years, then it is a grave mistake, because some portions of that highway will last forever. If you buy five miles of road in constructing through a new portion of the State, as was done from Saratoga to Glens Falls, I think — no, Lake George — that will last forever, unless there is a volcano or an earthquake to wipe it out of existence. The debt should not last forever, but there should rest in the Legislature the right to determine that that portion of the cost — taking as arbitrary figures five million dollars — that that portion of the cost which, we will say, is one million dollars, should be paid within a period of fifty years; and that that portion of the cost which is used in the construction of bridges, and which, we will say, for arbitrary purposes, is one million dollars, shall last for a period of twenty years; and then the laying of the sub-structure, which is another million, shall last for, say, ten years — it will last longer than that, but we will say ten years; and then that the top surface, the so-called water-binder, the cost of which will be two million dollars, shall last for a period of five years. Now, the point which I raise is, under the language used, how are you going to determine the probable life of the work or the object? When you submit to the people a

referendum, what does it say? "Shall we spend fifty million dollars for the construction of highways?" That is the language used. Who is to determine the life of the highway? How is it to be determined? By the language of this amendment? Now, if that language is so elastic as will permit the Legislature to expand it so as to say that these different portions of the work shall be paid for by the issuance of bonds, serially, payable in certain terms, such as twenty years, fifteen and ten, then, of course the object sought is accomplished; but, if not, then a grave mistake will be made, because it will place too large a burden upon the people of the State in the payment for a single object or a single work within, say, the shortest period of the life of a portion of that improvement. Now, it is solely a question of construction. My view of it is that the construction is such that you will be unable to determine now or at any time how long that serial bond issue may extend, whether for the top dressing or whether for the sub-structure or whether for the term of the length of life of the bridges, and, with the object of making that more clear, I offer this amendment:

The Chairman — The amendment will be sent to the Clerk's desk. The Secretary will read the Proposed Amendment.

The Secretary — On page 4, line 2 after the word "laws" insert the following: "which shall apportion the work or object for which the debt is to be contracted into various parts so as to determine the probable life of each and the term of the debt to be contracted for each such portion, and".

The Chairman — All those in favor of the adoption of the amendment will say Aye, opposed No. The amendment is lost. The question now is on the adoption of Section 4. Are you ready for the question?

Mr. Leggett — Apropos of the remarks of the gentleman from Oswego, I want to just call attention to the fact that the issuing of serial bonds by the State of New York is not by any means new; that for many years the statutes of this State have required, in the case of bond issues by villages, that they shall be issued payable in instalments, and consequently the State is not entering on any experiment at all. They have been issued that way for a great many years and successfully marketed.

Mr. Cullinan — But there has been no hard and fast rule and it all depends, does it not, or largely, upon what the buyers will take?

Mr. Leggett — No, there has been a hard and fast rule; that is, that they shall be issued payable in equal annual instalments.

Mr. Cullinan — But does it not depend upon the market for the particular kind of bonds?

Mr. Leggett — I am only saying that there has been found a market for just such things as that, and a good free market.

The Chairman — The question is on the adoption of Section 4 as amended. All those in favor of the adoption of this section will say Aye, opposed No. The section is adopted. The Clerk will read Section 5.

The Secretary — Section 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State, heretofore contracted, shall be continued; they shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for such payment and extinguishment as hereinafter provided. The Comptroller shall each year appraise the securities held for investment in each of such funds at their fair market value, not exceeding par. He shall then determine and certify to the Legislature the amount of each of such funds and the amounts which, if thereafter annually contributed to each such fund, would, with the fund and with the accumulations thereon, and upon the contributions thereto, computed at the rate of 3 per centum per annum, produce at the date of maturity the amount of the debt to retire which such fund was created, and the Legislature shall thereupon appropriate as the contribution to each such fund for such year at least the amount thus certified. If the income of any such fund in any year is more than a sum which, if annually added to such fund, would, with the fund and its accumulations as aforesaid, retire the debt at maturity, the excess income may be applied to the interest on the debt for which the fund was created. After any sinking fund shall equal in amount the debt for which it was created, no further contribution shall be made thereto, except to make good any losses ascertained at the annual appraisals above mentioned, and income thereof shall be applied to the payment of the interest on such debt. Any excess in such income not required for the payment of interest may be applied to the general fund of the State. The Legislature may also by general laws provide means and authority whereby outstanding bonds of the State, for which sinking funds are provided, may be exchanged at par for cancellation, for serial bonds of the form authorized under section 4 of this article upon such terms and conditions as to interest and otherwise as it may in its discretion authorize or determine, except that the debt as thus refunded shall finally mature no later and at no greater comparative cost to the State than the original debt; the determination of the Legislature as to such comparative cost shall be conclusive. No further contributions to the respective sinking funds shall be made on account of bonds so exchanged and the proportion of any such sinking fund which the amount of the bonds so exchanged shall bear

to the amount of bonds outstanding of the same issue may be appropriated, as required, for the payment of the substituted serial bonds.

Mr. Wagner — Mr. Chairman, I offer the following amendment.

The Secretary — Strike out lines 7, 8, 9, 10 and 11, on page 6, and insert in place thereof the following in italics: "Any surplus above the amount required to provide the sinking fund herein constituted for the payment of each bond at maturity which has been raised by taxation or provided in any other manner, or shall be raised or provided in the future for the payment of such bonds, shall be used to reduce the contribution to the sinking fund or to reduce the amount required to pay the interest on such bonds, and for no other purpose whatsoever."

Mr. Wagner — Except upon this proposition I have been in absolute accord with the report of the Committee on State Finances, in reference to the particular provisions of the Constitution which we are now discussing. This proposal affects the excess in our sinking funds. As you must have observed by looking at the report of the Comptroller which was submitted to this Convention as the result of a resolution introduced by me, there is now in our sinking funds created for the different indebtednesses an excess of \$29,000,000 out of a total of \$40,000,000 in our sinking funds. Now, that \$29,000,000, it is conceded by all those who have given this subject any study, and I think by members of the Finance Committee, should at the present time not be there; in other words, while it has been physically put into the sinking funds, legally and properly it should not be there. And, to the extent that it is in excess, it is an injustice to the taxpayers who have made the contributions. And while we have been discussing here, and seem to be mostly concerned with, the bondholders — those who are fortunate enough to have money with which to purchase our securities, — we have given little consideration to the taxpayer, although he is bearing a tremendous burden just now. Now, the Committee in its report has recognized that excess to the extent of permitting the suspension of contributions for principal wherever an excess exists. Now, my proposition is to use it not only for the payment of principal into the sinking fund, but also to pay the interest on the bonds for which the sinking funds were created. Now, the excesses are due not to any contract with anybody; they are due simply to errors made, and I think in the admirable address which we heard to-day from Mr. Stimson, he practically conceded that the excesses are the result of errors committed by enactments of the Legislature — perhaps by constitutional provision, although I do not concede that —

and also by legislators taking advice perhaps from those who are interested in having for a short time a tremendous sum in our sinking fund. Now, the first mistake was made when a sinking fund was created for ninety-nine million dollars. At once and for several years contributions were made out of the general fund into that sinking fund, although the bonds which it is assumed were to be retired by those payments had not been issued at all and there was no outstanding indebtedness against the State, and yet we made this very ridiculous mistake of making contributions for several years into a sinking fund where there was no outstanding indebtedness which was to be amortized by this particular sinking fund. Now, that error, it seems to me, ought to be rectified by paying back, as nearly as we can, to the taxpayers, from whom it was exacted, this unjust toll. Now, let me say — by the way, let me give the other two reasons so that we may know exactly how these excesses were created. The second was this, that although there was no constitutional provision calling for any such legislation, in each legislative enactment, providing for a bond issue, a rate of tax was put into the law which was to be levied each year and the amount collected was to be paid into the sinking fund. Now, by thinking only a moment or two you can see how improper that is from a financial standpoint because that assumed, in the first place, that our assessed valuations would be the same each year and that therefore the contribution, the amount collected, would be the same each year. But because of the irregularity of our assessments the contributions each year were different, and in all cases were away in excess of the amount required to be contributed. The third reason was this, that in our bonds — in the provision of the Constitution providing for highway bonds, it was provided that 2 per cent. should be paid into the fund each year, and it took no account of the earnings of the sinking fund after the amount was paid in. My own opinion is, and there does not seem to be any constitutional provision to the contrary, that those earnings each year should have been used to pay the interest on the bonds and if they were more than necessary to pay the interest they should be paid into the general fund. Instead of that, we followed the policy of keeping all that money that accumulated in the sinking fund, and in that way absolutely violated the spirit of our Constitution which said that each year there shall be paid into our sinking fund an amount which at maturity would be sufficient to meet our indebtedness. To realize what this tremendous excess means, instead of that, we have been paying at a rate which at the end of twenty years would have all the money in our sinking fund which should have been distributed, in justice to the taxpayers, over a period of fifty years. Now, I know one of the suggestions

that is to be made by our distinguished lawyers here is that the sinking fund, being created to amortize the debt at maturity, no matter under what circumstances it was paid in there — nothing can ever be taken out, even for the payment of interest. Well, now, the sinking fund was not created in any of these cases merely to amortize the bonds at maturity. It was created to pay the principal and each year to pay the interest. Now the Constitution says that — if I may refer to the sections; I do not want to read the entire section, but in section 4, near the end — you will get the thought which the framers had in mind — it says: “In case the Legislature increase the rate of interest upon any such debt or part thereof, it shall impose and provide for the collection of a direct annual tax” — to pay what? — “to pay and sufficient to pay the increased or altered interest on such debt as it falls due, and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof” — and here is the obligation of the Legislature — “and shall appropriate annually to the sinking fund moneys in amount sufficient to pay such interest, and pay and discharge the principal of such debt when it shall become due and payable.” Now, my point is this, and I think it is quite clear that there is an obligation each year to pay money into the sinking fund, — to be used how? To be used to pay interest upon the bonds and to discharge the principal at maturity. Now, this large accumulation then has been paid into these funds year by year for two purposes, to pay the principal at maturity and to pay the interest each year. Now, if that is so, what legal objection can there be, then, to using the excess of the bonds for the purposes for which the sinking funds were created, namely, the principal and the interest? Now, every legislative enactment appropriating money for the payment of interest on our bonds, if you will examine them, appropriates money from where? From the general fund? If it took it from the general fund, there would be something in the argument which will be presented by Mr. Stimson. No. The legislative enactments provide that out of the sinking fund shall be taken a sum of money to pay the interest upon the bonds. Now, the Constitution, even, recognized that feature for which I am contending, that whenever there is a sum sufficient in the sinking fund, you may take it out for the purposes for which it was created. Look at section 5, to which Mr. Stimson referred me several times in antagonizing my point: “The sinking funds provided” — now remember again, Section 5 of Article VII; the sinking funds provided for what? — “for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any

manner other than for the specific purpose for which it shall have been provided." But this section says it is provided to pay principal and interest. Now, that is quite clear. Now, there is another provision which says that when there is a sum in the sinking fund sufficient to meet the indebtedness of the fund for that year, or the outstanding bonds, no appropriation need be made. Now, what does that say? Let us read the whole thing and get it clearly in mind: "The Legislature may appropriate out of any funds in the treasury moneys to pay the accruing interest and principal of any debt heretofore or hereafter created, or any part thereof and may set apart in each fiscal year moneys in the State treasury as a sinking fund to pay the interest as it falls due, and to pay and discharge the principal of any debt heretofore or hereafter created"—to pay the principal and to pay the interest; that is what the sinking fund is for. Then it says, "in the event such moneys, so set apart in any fiscal year be sufficient to provide such sinking fund, a direct annual tax for such year need not be imposed and collected, as required by the provisions of said Section 4 of Article VII, or of any law enacted in pursuance thereof." That is what I am contending for here. There being a sufficient sum in our sinking fund to pay both principal and interest, I say that we have a right to appropriate out of that sinking fund money to pay the interest, for which it was created. That is very clear to me, but I am perhaps not always fortunate in expressing myself clearly, although I hope I have made myself clear to others on this. Now, I have had calculated the difference which would result from the method I am advocating and the method as proposed by the majority report upon this point. I find that for 1916—and I am relying upon an accountant for this and not upon my own mathematics, because I know nobody here who would have any confidence in that—that under the system as proposed by Mr. Stimson, there would be a little less than \$7,000,000 which would have to be contributed into our sinking funds this year, even making allowances for the excess. That is on a basis of the requirement which—I think upon longer investigation Mr. Stimson will find that the figures he gave this morning as to what was required next year as a contribution for principal and interest should be about \$10,000,000 and not \$7,000,000. So that, under Mr. Stimson's system, he saves the taxpayers about \$3,000,000, and I save the taxpayers under my system about \$7,000,000, and if I am within the law, I certainly am advocating something which is just. No one can deny the justice of it because we ought, if a mistake has been made and money has been taken out of the pockets of the taxpayers of which they should not have been relieved, as nearly as possible, to rectify that mistake by paying it back.

Mr. Brackett — If the delegate is right in the statement of the fact, it seems to me that he is unalterably correct in his contention, but is not that same result met by the language of Section 12 of the new matter, on page 6 of the proposed bill, "After any sinking fund," etc.?

Mr. Wagner — No, that has nothing to do with this proposition. That simply provides, Senator, that when this accumulation — that has to do with a situation after all the money has been paid in to the sinking fund, which is enough to amortize the bonds at maturity. That has nothing to do with the question I am now discussing. Now, as a matter of fact, one other question has been raised, that this might impair the credit of the State. Well, this has been done on two different occasions in this State, and I heard no complaint from any bondholder, nor was the market affected in the least bit. I know that nobody here would suggest it, but if this excess is merely to be used by those who are speculating in our bonds, I say that they have no forum here, that for their convenience, for future speculation, we would not keep this tremendous excess in our sinking fund without giving the taxpayers some relief. I am interested in the man that gets up at seven in the morning and works until seven at night; not in the one that has breakfast at ten o'clock or noon and stops working at two o'clock in the afternoon when the stock exchange closes, and it is for the first man that I am pleading in this particular case. Now this very administration this year did with reference to one of the sinking funds — and I believe they did it not only because they felt that it was just, but that it was legal — they did the very thing I am advocating, in sinking fund No. 3. No appropriation was made for either principal or interest, so that the interest for those bonds would have to be taken out of sinking fund No. 3, and paid over to the bondholder, exactly as I am advocating now. And did you hear of any impairment of our credit throughout this State? Was there any complaint from any bankers or any bondholders in this State? Last year the very same thing was done and there was not any impairment of our credit. There was no complaint from anybody. There are always some around Albany who I know, as I say, have no hearing, who are speculating in these bonds, who become keen the moment you do anything to the sinking funds, because of the opportunities that they have had to tell the one to whom they are willing to sell that here is a sinking fund which, at the end of twenty years, or less, will have accumulated a sum which ought to be distributed over a period of fifty years, and just see how sound a proposition, what a wonderful investment that is; and to the innocents that appears as a reasonable argument for making the investment. But any one who knows anything about our State, knows that our securities are absolutely safe and

the excess in the sinking fund does not in any way add to the security which our bondholders have. Now, if I were doing anything that affected the security of the investment, I would say, no, I refuse to lend myself to any such proposition, because I am as concerned about the credit of the State, about the welfare of the State, as the gentlemen who are a little bit timid and who won't go into this undertaking; and after all, there is an excess, gentlemen, mind you, of twenty-nine million, and under my plan, how much do you take out of that twenty-nine million? How much do you subtract from it? Six million dollars, or seven million dollars, and you are taking out a sum which should not be there at all. The Constitution never contemplated any such thing.

Mr. Stimson — You mean six million dollars in one year?

Mr. Wagner — Yes, sir.

Mr. Stimson — With no provision against doing it next year?

Mr. Wagner — No, because there is the other provision that the Comptroller must determine each year,— we have got a very elaborate and very effective and very admirable rule by which the Comptroller determines the contribution which is needed to pay into our sinking fund, which, at maturity, will satisfy the bonds. You use the accumulated excess there for the purpose for which the sinking fund was created and until the amount in the sinking fund is exhausted and other sums are needed no contribution should be asked for. Now, I don't total that together, I say have the sinking fund so that there shall be absolute protection in favor of the security of the bond. Now it may be amusing, this thing of trying to relieve the situation. No argument was presented to me by either the Chairman or anybody else, when I put the question, "Does it any way affect the security of the bond?" "No." "Is there anything in my suggestion which will interfere in any way with the investment?" "No." Then what was the objection? The answer I got was it is psychological; the stock market in Wall street may be annoyed at your interference with the sinking fund and they may not go — now that is the truth and you may smile all you like, and I don't say the motives of those who suggest them are not very worthy, but I simply say it is a mistaken notion. The theory is it may have a psychological effect on them, they may not know the real effects and thinking there is interference with our securities it may affect the price of our bonds. Well, now, I am never afraid to do the right thing and the people will know the right thing here, and there is no class of people who keep such a careful watch upon our sinking funds as the gentlemen who are constantly either speculating or investing in them, and they know the facts and they know their security has not been interfered with in any way. Now, I would not be so earnest in my desire to have

this additional relief if it were not for the fact that we are promised a direct tax of nineteen millions. In the city of New York there is a depression which will make any relief a mighty welcome thing to each taxpayer. I predict that the nineteen million direct tax will mean to many of our real estate owners absolute confiscation and every dollar of which we can relieve them will be a mighty — well, I was going to say charitable, but certainly a just thing to do, especially as he is the one who contributed this excess into this fund and it is for that reason that I am urging it. Otherwise, perhaps, I would not urge it so earnestly, if it did not meet with the approval of those here in authority who have been the authors of this Proposed Amendment.

Mr. Stimson — Mr. Chairman, I will only take a word in reply. I do not read the proposition which has been submitted by Senator Wagner with the same limitations and with the same innocence of design as he read it, or innocence of result. According to my reading of it, it would permit the amount in the sinking fund, as now stated, any surplus above the amount required, which, as he states, is \$29,000,000 in the aggregate, to be used in reducing the contribution to the sinking fund, or to be used to pay the interest on the bonds. There is no limit to be placed as to the extent to which that would be done. The extent of time or years, or the extent of years to which that could be done.

Now, the simple answer to that is, as I tried to explain this morning —

Mr. Wagner — The surplus as stated in the proposal, isn't it so that nothing can be used except the surplus?

Mr. Stimson — Yes. And that, as the delegate has just stated, is \$29,000,000. He now tells us he only proposes to use six million of that. I say that it was the purpose of the Committee that not one dollar of that should be used and that no other method will satisfy the honor of the situation. Why the gentleman stops at next year, his amendment does not make clear; or what safeguard he proposes to suggest that what is proper for the year 1915 in the exigencies of New York city would not be applicable in 1916, and 1917 and thereafter. It seemed to this Committee that the only safe rule, the only rule in honor which they were bound to follow, was the rule that took the amount in that sinking fund as it has been represented by this State and as it is to-day and to make that the starting point below which we should not go. I should dislike very much to have this State put in a position to be obliged to explain why it was not more than six millions short, if you please, next year under what the Comptroller had stated in his advertisement and in his annual reports that it was to-day. The gentleman's statement to the effect that

his effort is on behalf of the workingman needs only a word of answer. On no class of the community does an impairment of the credit of a State or a county or a city fall with greater burden than on those who pay the taxes in the shape of the poor man. And so the Committee has felt without any doubt that in working for the preservation in their present integrity of these funds, they were working in the interest of every citizen of the State, from top to bottom, without distinction of class or wealth. I therefore sincerely hope the amendment will not prevail.

Mr. A. E. Smith — I think that after the very clear explanation that has been made by Senator Wagner that this Convention should adopt his Proposed Amendment because the Chairman of the Finance Committee, to my way of thinking, made absolutely no reply to it. The thing that I was anxious to know, anxious to find out, was how Senator Wagner's proposition could impair the credit of the State. The only reply that I heard from the gentleman was that he did not propose to take it up. And that I understood was with an emphasis that meant whether it was right or whether it was wrong. Now, if I am able to read, according to page 6 of his own bill, he proposes to do hereafter the very thing that the Senator suggests to be done with the excess that is found in the funds at the present time. Now, what is there so sacred about these funds that a very apparent mistake, a blunder, a piece of stupid bungling in State finance cannot be here and now rectified?

Mr. Stimson — Does the gentleman understand the difference between income and principal?

Mr. Smith — Yes, sir.

Mr. Stimson — Is there anything about the section to which you refer which proposes to apply anything more than the income of any fund to future contributions or to interest?

Mr. Smith — What is there more sacred about the income, if it is in excess, than there is about money raised by taxation that is in there in excess. That is the point. It is all money. Whether it comes as income from the investments of the sinking funds, or whether it comes out of the general funds of the State, and out of the pockets of the taxpayers, it is all money; and there is nothing any more sacred about the taxpayer's money that is there in excess than there is about the money that will be there in excess as a result of earnings. However, I wish to say I think that Senator Wagner has made an absolutely unanswerable argument and the only argument against is, that you do not propose to do it. The Record ought to show some good reason for not doing it.

Mr. Brackett — I do not regard myself as singular in the slightest degree in the position that we should take no step that in

the forum of law, or in the forum of conscience, would be regarded as impairing to the extent of a penny the security of men who have purchased the bonds of the State upon the faith of any provision of either the Constitution or the statute. But the persons who have thus purchased have done so upon the faith either of some provisions of the Constitution, or of the law, and they have no right to require, or to look further to find, any other different security than that prescribed by law. Now, when it comes to the facts with respect to the case here, I do not assume to have any knowledge; but, if the facts, as stated by the delegate from New York, Senator Wagner, are correct, that there has been shoveled into this sinking fund, or the sinking funds, in excess of the amounts required by any constitutional provision, or any law, a sum of money amounting to \$29,000,000, or any other sum, we violate no provision of contract, and we do no violence to the most conscientious regard for our contracts, if we get it out of that fund just as quick as we can. Why, suppose, Mr. Chairman, that the sinking fund requirements be simply that ten millions of dollars should have been put in there by a certain year, say by the first of last January, that through the mistake of some clerk in the Comptroller's office, or of the Comptroller himself, or of some official somewhere, there should have been put into this fund in the bookkeeping of the State, and the securities actually delivered into the fund in this case, the sum of \$29,000,000. Could there be any doubt that the very official who had blundered and who put the securities into the fund ought to get it out just as quick as he could, either through bookkeeping or through the actual abstraction of the securities from those funds, and replacing them where they belonged? I can conceive of no possible reason that could be urged in the case supposed against getting the excess that has thus been put into the fund by mistake, by a clerical mistake, or a bookkeeping mistake — I can conceive of no possible reason that can be urged why that should not be taken out just as quick as it could. Now, is the situation different here, because we must all agree on the rule of law and the rule of morals — is the situation different here and are there any facts within the information of the learned chairman of the Committee on Finance that make the situation any different from the case supposed?

Mr. Stimson — Every dollar that is in the sinking fund, as far as I know, has been put in under an expressed provision of this State. The statutes of this State provide that for either one of these funds there shall be imposed for each year after this act goes into effect, until all the bonds issued under the authority of this act shall be due, an annual tax of twelve one-thousandths of a mill, and so it goes on.

Mr. Brackett — And that has resulted in this large surplus about which we are inquiring?

Mr. Stimson — That has resulted in what has been referred to as a surplus. By that is meant not that there is in any fund an amount which is more than sufficient to pay the debt which the fund is supposed to meet.

Mr. A. E. Smith — I would like to ask the chairman of the Finance Committee is there any statute which provides that payment must be made before the bond is sold?

Mr. Stimson — There is a statute that provides that there shall be levied a certain tax and a certain amount raised each year, annually, for this purpose, and under that statute the money was collected and paid into the fund to which the gentleman from New York refers.

Mr. A. E. Smith — That does not answer my question. I asked, is there any statute that claims that this money must be paid in before the bond is issued?

Mr. Stimson — The particular statute to which I refer is such a statute.

Mr. Brackett — Well, Mr. Chairman, if we are, either through constitutional limitations, or through some mistaken statutes, so mummified and trussed up that we cannot correct such a condition as is alleged to exist, then I can only say that it is a most miserable situation. It cannot be, I submit, Mr. Chairman, that there can be anything offensive in taking out of a fund something that ought not to have gone in there and restoring it to its proper place for the benefit of the taxpayers. If it is true, as the delegate from New York, Senator Wagner, says, that when the ninety-nine millions of dollars of bonds to build the Barge canal was provided for, that there was a provision that the sinking fund should commence before there were any bonds issued, I must say that I can see no possible wrong, but I can see a very great measure of relief in taking that fund and in placing it where it would be for the benefit of the taxpayers. Now, I am following mighty closely on the heels of my honored leader in this proposition as to the finances of the State and I am putting my small feet in his big financial tracks, but I must confess that if the state of facts is as detailed by the delegate from New York, Mr. Senator Wagner, I am only too glad and mighty anxious to labor for and to vote for and to help such relief as would come from the proposition he makes.

Mr. Wagner — Just to make it a little more clear, perhaps, if I have not made myself clear to the Convention, and particularly to Senator Brackett, and it is this: That the obligation of the State to the bondholder, about which we hear a good deal of Fourth

of July oratory and no real facts, is this, and it is a provision of the Constitution: "The Legislature shall appropriate annually to the sinking fund money in amount sufficient to pay such interest and pay and discharge such principal of debt when it shall become due and payable." That is the obligation of the State to the bondholder as declared in the fundamental law. Now, it is that and nothing more. This is Article VII, Section 4, at the very end of it; and when by some mistake, and it was a mistake, an accumulation has been created and money has been exacted from our taxpayers unjustly, why then, under the Constitution, we can remedy that, for, let me call your attention to another section of the Constitution which had in mind just such situations as these. Now, see whether I am trying to impair the credit of the State, or the honor of the State; and without egotism I have lent my services and made my contribution to the State, showing that I have some regard for the honor and welfare of the State. Perhaps I have made more financial sacrifices than others who preach a good deal about their interest in the welfare of the State. Now, let me look at Section 11, at the very end: "In the event" — this is constitutional, having in mind a situation just as is now before us: "In the event such money so set apart in any fiscal year be sufficient to provide for such sinking fund," — a sinking fund for principal and interest — "a direct tax for such year need not be imposed and collected as required by the provisions of Section 4 of Article VII." In other words, the Constitution recognizes that there may come a time from an inequality in the contribution that there would be an excess, and then they said you need not make any contribution that year; but you may take the money from your sinking fund which is in excess and use it for the purposes for which the fund was created, which is the principal and interest. And, at this last session of the Legislature, they did the very thing for which I am pleading now. They failed to provide any contribution for principal or interest in sinking fund number three. Why? Because those in authority, and I hope the gentleman from Albany knew of the situation, realized that there was an excess there sufficient to meet both principal and interest and so the interest, the contribution to sinking fund number three, will have to be paid out of that sinking fund this year without any provision or appropriation from the Legislature or from the general fund. So that in this session of the Legislature, and in this administration, it was recognized as honorable, the very principle for which I am contending; and the last session of the Legislature recognized as honorable the thing for which I am contending; and they had in mind to reduce as much as possible our necessary direct tax so as to relieve the taxpayer from an unnecessary burden, so long as there was sufficient

money in our sinking fund to meet these obligations. So that under the Constitution, I am right, and in answer to that contention, what is given? The Chairman — I know, not intentionally to slur me — said, in effect, “Oh, it requires no answer, what the gentleman says.” Well, that is always the answer of one who has no facts to present in answer to his opponent. I am contending for the bondholders and the taxpayers. The bondholders’ security is not affected, and the taxpayer is entitled to justice from us.

Mr. C. A. Webber — Let me give a homely illustration of how this strikes me. I bought something for ten dollars and I made an agreement with my creditor that I would pay that ten dollars by accumulating it in even amounts during a period of ten weeks, until I had the full amount accumulated, then he would be satisfied to give me that credit. Suppose I made a mistake and that instead of accumulating a dollar a week, all that was required of me, I accumulated a dollar and a half a week, and at the end of five weeks I found I had seven dollars and a half accumulated. Can anyone say — can my creditor or anyone else say, that I would not be justified in turning around and taking the excess of \$2.50 and doing as I pleased with it?

Mr. Clinton — I do not quite know what the amendment proposed by Mr. Wagner is and I would like to hear it.

The Chairman — The Secretary will again read the amendment proposed by Mr. Wagner.

The Secretary — On page 6, strike out lines 7, 8, 9, 10, and 11, and insert in place thereof the following: “Any surplus above the amount required to provide the sinking fund herein constituted for the payment of each bond at maturity which has been raised by taxation or provided in any other manner or shall be raised or provided in the future for the payment of such bonds, shall be used to reduce the contribution to the sinking fund, or to reduce the amount required to pay the interest on such bonds and for no other purpose whatsoever.”

Mr. Clinton — If I understand the amendment, the purport of it is, that so far as present conditions are concerned, to remove from the sinking funds, what is claimed to be in excess of the amount necessary to amortize bonds within the time or at the time when they fall due. The proposition is one which naturally appeals to the gentleman who has raised seven dollars and a half, when he should only have raised five, and it is quite likely to appeal to those who do not understand the situation. As I am one of the criminals responsible for the condition of the canal fund I beg leave to give a simple statement of the construction of the Constitution as it exists, which was arrived at by myself and

others, when the canal improvement bill of 1903 was prepared, presented in the Legislature and passed by it, and I wish to say that the conclusion which we came to as the proper construction of the Constitution has never been questioned until within the past two or three administrations within this State, and, so far as my opinion goes, there is no reason to question it. There has been no mistake whatever in the raising and inclusion in the canal sinking fund of the amount that is now in that fund, although it is true that if the same principle were carried out in the future, it would be following out a financial plan which is radically wrong. The situation at the time the canal bill was passed was this: The Constitution provided that no debt should be created "unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein, and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within the" — as it then stood, eighteen years — but as afterwards modified — "within fifty years from the time of the contracting thereof." The only construction which could be put upon that is that to make a referendum valid, the law, as specified here,— the law which is presented to the people to vote upon must provide for the raising of a sufficient sum, or the imposition of a direct annual tax, sufficient to pay the interest and principal. Now, the only way that must be included in the law,— it will not be necessary hereafter, if this financial plan be adopted,— the only way to determine what was a sufficient amount to pay the debt when due was by including in the act a rate based upon the assessed valuation of the State and to produce it in that way and in no other way.

Mr. Wagner — May I ask the gentleman if the rate fixed in any particular law was, in some years, not sufficient to meet the indebtedness at maturity, because of the lessening of the assessed valuation of real estate, what then? Would the State have to make an additional contribution?

Mr. Clinton — The State would have to put it in as a result of this provision in the Constitution. The State would have to if it was necessary to keep its obligations to its creditors and to pay them.

Mr. Wagner — What is the purpose of issuing a bond for fifty years if it is not that the burden should be distributed equally among the taxpayers during those fifty years?

Mr. Clinton — I will come to that in a moment. I am now talking about the law and the question whether there has been any mistake such as Senator Brackett spoke of, in including this money in the sinking fund. There was the law, and I wish to

say this further, as illustrating the necessity of fixing a rate based upon the assessed valuation. After this act was passed, its constitutionality was attacked by eminent counsel, and one of the arguments made before the Attorney-General for the purpose of securing permission to bring an action in the name of the people of the State to declare the canal improvement act void, was that it left to the Comptroller, or delegated to the Comptroller a part of the powers of the Legislature. The answer was, of course, that the Comptroller's duties performed by him were merely clerical. It was insisted that the statute must have fixed a sum and that without knowledge of when the bonds would be issued. There was the law. I wish to say to the gentleman that those who were interested in the improvement of the canals for the benefit of the State took into consideration every circumstance which presented itself for the purpose of adjusting that very thing, not on the basis of serial bonds, because that was impossible; but for the purpose — assessed valuation in State roads — of adjusting the amount to be raised, so that we could arrive at a proper amortization. Now that rate of interest has been changed from time to time. Whether or not that was constitutional is not the question, but it was changed, by changing the rate as the assessed valuation raised. I doubt the constitutionality of those acts but the effort was made. But every one of those acts was in compliance with the law, and the original act necessarily drawn from a legal point of view — this money has gone into that sinking fund and it has gone there pursuant to law. Now, every bond that has been sold has been sold on the faith of the provisions of that law. The gentleman may not think so, but if he will inquire of the Comptroller the difficulties they have had in placing on the market one hundred — I am going to call it \$101,000,000, because I imagine by this time the full amount of the bonds have issued, or very nearly, he will find that he was dealing with men who were relying upon these very provisions of the statute, upon there being a sinking fund, which absolutely would take care of all bonds and upon that sinking fund not being interfered with, and the reason, gentlemen, is, and it will appeal to you in a moment, that the holders of the bonds cannot sue the State and their only security is the average yearly payment to the sinking fund, and that, I think, is what the chairman of this Committee meant when he said that the question of the honor of the State was involved, that the suggestion required no answer. One thing more. Does the taxpayer gain, except temporarily, if this money is taken out? Instead of being in bank and drawing three per cent., I believe that is about what it does draw, Mr. Chairman?

Mr. Stimson — Three and a half per cent.

Mr. Clinton — Three and a half per cent. It is devoted, I may say, to current expenses. I don't know to what other purpose it can be devoted. Part of it may be devoted to interest, but that can be done without any such amendment as is suggested.

Mr. Wagner — You say that without my amendment the excess in the sinking fund may be used for interest on the bond?

Mr. Clinton — I don't know what the practice of the Comptroller is. The sinking fund, all moneys raised under this law are applicable to interest and principal.

Mr. Wagner — Well, now, that is all that I am contending for. There can be no objection to my amendment if you agree with me as to what the sinking fund is created for, and what can be done with that money. That is all I am asking for.

Mr. Clinton — Let me say, in answer to that, if that course has not been pursued, then the interest has been paid and the amount in the sinking fund has been deposited to pay the principal and must be preserved.

Mr. Wagner — Exactly. Now let me inform you, because I have studied this, that is the practice the Comptroller has followed. He has used the fund of both principal and interest, and if you will look at all the appropriations which have been made to pay interest on bonds, you will see that the law provides that the sums shall be taken out of the sinking fund and paid to the bondholder for interest. Now, that is all I am seeking to do here, so we are in perfect accord.

Mr. Clinton — We are not in perfect accord, Mr. Wagner, for this reason: If the practice has been to make deposits in that sinking fund for interest and principal on maturity, then your amendment is not necessary. If it has not, then the principal must be preserved to preserve the honor and credit of the State.

Mr. Wagner — We are adopting a new Constitution.

Mr. Clinton — I know it, and the new provision does not, as I read it, interfere with the proper amortization of these bonds, nor does it do —

Mr. Wagner — Yes, it does. Will the delegate yield again? Yes, it does; because by the specific provision of page 6, lines 7 to 11, you say what shall be done with the money in the sinking fund, and that only when the income exceeds the interest due then you may use the surplus.

Mr. Clinton — "If the income of any such fund in any year is more than a sum which if annually added to such fund would, with the fund and its accumulations as aforesaid, retire the debt at maturity, the excess income may be applied to the interest on the debt for which the fund was created."

Well, that applies to the future entirely.

Mr. Wagner — Exactly. I am trying to provide for the future.

Mr. Clinton — That applies to the future and it protects the present sinking fund. Now, Mr. Chairman, what I wish to say is simply this, that if that money be taken out it will have to be replaced in the future and therefore the relief to the taxpayer and all that is only temporary relief, at a cost which may imperil the placing of bonds in this State in the future. There is one other thing to which I wish to call attention. Reference has been made by the Senator to the condition of New York city. If I am correct, the assessed value is about \$11,000,000. If the \$27,000,000 to be raised by the referendum is approved by the people, in order to pay the principal on \$1,000,000, one-tenth of a mill is all that it will be necessary to assess, and one-tenth of a mill would be imposed upon the poor real estate owner in New York city owning property assessed at one million — a tax of only \$100 would be imposed.

Mr. Low — I am so much in sympathy with what Senator Wagner wishes to accomplish, that when this question was first raised in the Committee on State Finances, I declined to commit myself to the position which the Committee has taken until I could make inquiry as to the probable effect of pursuing a different course. I do think it a very great hardship upon the people of New York State that there should be an excess of \$29,000,000 in the sinking fund, in excess of the actual needs. I inquired not of men who have bonds of the State, but of men who sell bonds of the State, what would be the probable effect of pursuing the policy that the Senator, the delegate from New York, has so eloquently urged upon us, and I received the reply that it would be very hazardous to the credit of the State, and for this reason: The sinking fund to-day is \$40,000,000, and that, as the Senator has said, includes a surplus of \$29,000,000. With \$6,000,000 taken out, those who look at the sinking fund of the State next year will find \$34,000,000, and at the end of five or six or seven years if that process goes on the sinking fund would be reduced to \$15,000,000 or \$16,000,000. It is a simple question, I think, which each one of us can ask himself, whether men who are buying bonds of the State, who want to buy will feel that they are as secure with a sinking fund in 1920 of fifteen or sixteen million dollars, as they would be if we keep the sinking fund at forty million dollars and add to it in the manner proposed by this legislation. In my mind it is not a question of conscience. I could do what the Senator proposes to do with a good conscience, but it is a question of judgment, and of the effect of reducing the fund year after year until it is only one-half what it is now. The best financial judgment that I can get is that that would be hazardous to the credit of the State. That is why I gave my consent to the position taken by the Committee.

Mr. Wagner — I want to make a slight explanation, Mr. Chairman, and show how our minds are running here. The distinguished delegate from Buffalo, Mr. Clinton, first stated that there was no need of my amendment because the thing which I have suggested could be done now. But when I pointed out to him that this was for the future and for a new Constitution, I was sorry to see him then abandon the conviction he expressed only just before and take up some new theory and find a way of opposing my proposition.

The Chairman — The question is on the amendment. All in favor of the amendment will say Aye. Those opposed No. The Noes appear to have it. The Noes have it and the amendment is lost.

Mr. Stimson — Mr. Chairman, I move the adoption of the section as read.

The Chairman — The question is on the adoption of Section No. 5.

Mr. Latson — Mr. Chairman, before that question is put, there is one phase of this question which is troubling me. I assume it has had the careful consideration of the Chairman of Finance and perhaps he may enlighten me. These bonds unquestionably contain a provision specifically providing the amount to be paid each year into the sinking fund or embodied in the statute in such form that the amount is capable of absolute determination. Now that being so — I understand that that is so, is it, Mr. Chairman? Will the Chairman of the Finance Committee kindly inform me if I am correct?

Mr. Stimson — The bonds contain an expressed reference to the statutes under which this is levied.

Mr. Latson — Which enables one to determine the exact amount payable into the sinking fund each year; am I correct in that assumption?

Mr. Austin — If I may reply, the statute prescribes a fixed tax rate to be levied upon them each year.

Mr. Latson — That being so, it seems to me that this measure contemplates that the payments into the sinking fund in the future, that is, after the adoption of this Proposed Constitutional Amendment, shall be ascertained by a different method and shall no longer consist of the payments themselves, nominated in the contract itself, but shall be payments to be dependent upon the appraisal, the opinion and the actuarial judgment of the Comptroller, and we shall be substituting for that the actuarial method not defined by that contract, but defined by the Constitution, and I should be glad to know if I am correct in that assumption or not.

Mr. Stimson — The delegate has touched on one of the matters

most carefully considered by the Committee, but he has omitted to observe two vital words in line 6, on page 6, the words "at least." As I stated this morning, it was the object of this amendment to provide a new and certain and fixed remedy without disturbing any possible contract rights in a greater amount. The Committee therefore provided that the Comptroller or the Legislature by appropriation should provide at least that amount and leave any amount beyond to the determination of the courts on the suit of any bondholder who wished to bring it.

Mr. Latson — Mr. Chairman, I had no doubt I would receive the information and that my mind would be satisfied, and I thank the Chairman for the information.

The Chairman — The question is on the adoption of Section No. 5.

Mr. Wagner — Mr. Chairman, we have heard a good deal about the contract made by these different referendums fixing the rate and agreeing in the law that direct tax shall be made on the assessed valuation of our real estate to collect that sum. As a matter of fact, since 1906 it has been only once that a direct tax was levied in pursuance of that referendum. Don't let us guess about this.

The Chairman — All in favor of the adoption of Section 5 will say Aye, those opposed No. The Ayes have it and the section is adopted.

Mr. Wickersham — Mr. Chairman, I move the Committee do now rise and report progress and ask leave to sit again at 8:30 this evening in continuation of the matter now before the body.

The Chairman — Mr. Wickersham moves that the Committee do now rise, report progress and ask leave to sit again to continue the discussion before us. Those in favor of the motion say Aye, opposed No. It is agreed to.

(President Root resumes the Chair.)

The President — The Convention will come to order.

Mr. McKinney — Mr. President, the Convention has been in Committee of the Whole, has further considered the order of the day, and has risen and asks leave to sit again at 8:30 this evening.

The President — The question is on the granting of leave to the Committee of the Whole to sit again at 8:30 this evening.

Mr. Latson — Mr. President, as a substitute for the motion offered by the chairman of the Committee of the Whole, I move that this Convention by unanimous consent continue its session for half an hour, or as much further time as may be necessary for the Committee of the Whole to resume its consideration of the special orders of the day.

The President — Is there objection? The Chair hears none and leave is granted to the Committee of the Whole to sit again forthwith, the session being extended for half an hour or such further time as is necessary to come to a vote upon the report of the Committee. Will Mr. McKinney resume the chair? (Mr. McKinney resumes the chair.)

The Chairman — The Convention is again in Committee of the Whole.

The Secretary — Section 11: "The Legislature shall annually provide by appropriation for the payment of the interest upon and in installments of principal of all debts created on behalf of the State except those contracted under Section 2 of this article, as the same shall fall due, and for the contribution to all of the sinking funds heretofore created by law, of the amounts annually to be contributed under the provisions of Section 5 of this article. If at any time the Legislature shall fail to make any such appropriation, the Comptroller shall set apart from the first revenues thereafter received, applicable to the general fund of the State, a sum sufficient to pay such interest, installments of principal, or contributions to such sinking fund, as the case may be, and shall so apply the moneys thus set apart. The Comptroller may be required to set aside and apply such revenues as aforesaid, by writ of mandamus at the suit of any holder of said bonds."

The Chairman — The question is on the adoption of the section as read. Are you ready for the question?

Mr. Westwood — Mr. Chairman, I am well advised of the very careful and earnest consideration which has been given to the substance of this proposed constitutional amendment as well as the exact language that it is presented in, and it therefore requires some degree of boldness on my part to suggest that there is in this section now under consideration a group of words which the Committee upon consideration of the matter that I am now about to speak of, may see fit to strike out. At line 9, on page 8, it is provided that by writ of mandamus the Comptroller may be required at the suit of any citizen to make certain disposition of these funds. Most of the members of this Committee know that the Committee on the Judiciary has under advisement proposals to permit the enactment of a short practice act by the Legislature. The Legislature as well has provided for a commission to suggest simplification of our procedure and the members of this Convention are recently, within a few days, I think, in receipt of the first volume of the three volumes which will form the product of that commission. It might therefore be deemed wise, either by the agency which the Convention may authorize to create a practice act, or by the Legislature itself, to do away entirely with all writs

and especially to do away with the writ of mandamus and substitute therefor, perhaps, a general form of action which will cover all remedies. To allow these words "by writ of mandamus" appearing at the end of line 9 on page 8, may well be considered so to constitutionalize the writ, or so to constitutionalize mandamus itself, as seriously to impede the work of the agency which the Convention itself may create, or seriously to impede action by the Legislature upon the process of simplifying our judicial procedure. There can, it seems to me, be no objection to the deletion of these words from the Proposed Amendment, because the word "suit" will still remain in that section and it will be competent for any bondholder by suit to compel the Comptroller to make the proper disposition of the fund. The word "suit" is all inclusive, as used in our jurisprudence, and includes not only writs but actions at law and proceedings in equity. It therefore suggests itself to me that the Committee might well consider striking out these words, so that the work of the agencies to which I have referred may not be impeded. I would like to ask the Chairman of the Committee on State Finances whether or not that matter has been considered.

Mr. Stimson — The matter was considered by the Committee. The considerations which led to the insertion of those words were, first, the suggestion by one of the members of the Committee who had had experience in those matters, that under the existing law a writ would not lie. I understand that there is, however, some question about that in some later decisions which indicated that that was a wrong hypothesis. A further purpose was to enact clearly the ministerial character of the duty which the Comptroller was to perform. On looking over it now in the light of the suggestion of Mr. Westwood, I am inclined to accept his amendment and to think that the remaining portion of the sentence makes clear what the purpose of the Committee was, namely, to make it clear that it was a ministerial duty and that any bondholder would have the right to set in motion the machinery necessary to effect it. And it is open to a question which he raises which had not been considered before, namely the possible change of remedy by this Convention itself. I am perfectly willing and would accept the amendment on the part of the Committee if that were possible.

The Chairman — Does the gentleman offer an amendment?

Mr. Westwood — I offer the amendment that the Committee strike out from line 9 on page 8 the words "by writ of mandamus".

The Chairman — The question is on the adoption of the amendment to strike out the words — the Clerk will read.

The Secretary — Page 8, line 9, strike out the words “by writ of mandamus”.

The Chairman — All in favor of adopting the amendment will say Aye, opposed No. The amendment is adopted.

The question now is on the adoption of Section 11. All in favor of the adoption of this section will say Aye, opposed No. Section 11 is adopted.

The Clerk will now read Section 12.

The Secretary — Section 12. Debts hereafter authorized for the improvement of highways shall be created only in the manner provided in Section 4 of this article. No provision of this article shall be deemed to impair or affect the validity of any debt of the State heretofore contracted or any right or obligation heretofore created between the State and any of its subdivisions.

The Chairman — The question now is on the adoption of Section 12.

Mr. Marshall — Mr. Chairman, for the sake of uniformity of expression, I move that the word “subdivisions” on line 16, page 8, be stricken out, and in lieu thereof that there be inserted the words “civil divisions”.

Mr. Stimson — I have no objection to that amendment.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Marshall, page 8, line 16, strike out the word “subdivisions” and insert in place thereof the words “civil divisions”.

The Chairman — All in favor of the adoption of this amendment will say Aye, opposed No. The amendment is adopted. The question now is on the adoption of Section 12 as adopted.

Mr. Stimson — I move the adoption of the section as amended.

The Chairman — All in favor of that motion will say Aye, opposed No. Section 12 is adopted. The question now is on the adoption of the proposal as a whole, as amended.

Mr. Stimson — Since we have been in this room, my attention has been called to a typographical error in the enacting clause. I move to amend on line 1 of page 1 so as to read, “Sections two, four, five, eleven and twelve of article seven”, and the word “is” should be stricken out and the word “are” substituted in the same line, so that the line will read as follows: “Sections two, four, five, eleven and twelve of article seven of the Constitution are hereby amended to read as follows”. I move that amendment.

The Chairman — The Secretary will read the amendment.

The Secretary — Page 1, line 1, after the word “two”, insert “four, five, eleven and twelve”; strike out the word “is” and insert in the place thereof the word “are”.

Mr. Stimson — And after the word "section" insert the letter "s".

Mr. Westwood — May I make a motion in respect to this bill? I introduced, Mr. Chairman, a Proposed Constitutional Amendment to require annual appropriations to be made for the upkeep of the highways of the State. I notice that that bill which I introduced, Introductory No. 479, is named in the list of the bills at the head of this bill for which this bill is proposed as a substitute. I do not find, and I have listened to the discussion this afternoon very carefully and with a good deal of interest — I do not find that this proposal touches the subject of my bill, and, fearing lest my bill may be deemed killed by the adoption of the bill that we are now about to report, I move to strike out of the introductory part of this measure the reference to my bill, Introductory No. 479.

Mr. Stimson — No objection to that. I call for the question on the motion previously made.

The Chairman — The question, first, is on the adoption of the amendment proposed by the delegate from New York, Mr. Stimson, as read. All in favor of the amendment as read will say Aye, opposed No. Carried. The question then is on the adoption of Mr. Westwood's amendment, which the Clerk will read.

The Secretary — In the introduction strike out the words, "Mr. Westwood (Int. 479),".

The Chairman — All in favor of the adoption of this amendment will say Aye.

Mr. Quigg — Mr. Chairman, I have no objection to it, of course, only I do not like the precedent of supposing that the opinion of the Committee as to what it is reporting about in any way binds a delegate as to his bill. Mr. Westwood's motion, from my point of view, is entirely unnecessary, and while I have no objection to it, I hope it will not be taken as a precedent, because it might make trouble.

The Chairman — All in favor of the motion will say Aye.

Mr. Wagner — At least one delegate on this side of the House does not know what we are voting on. Are we voting on a bill which was reported from a committee and is now on general orders?

The Chairman — The Committee is voting on the motion of Mr. Westwood to strike from the introduction any reference to his proposal, No. 479.

Mr. Quigg — I make the point of order that the motion is not in order, that we are not enacting the introduction at all.

The Chairman — The Chair is inclined to think the point is well taken.

Mr. Stimson — I move the adoption of the entire article as amended.

The Chairman — The question is on the adoption of the entire article as amended. All in favor of adopting it will say Aye, opposed No. The entire article is adopted.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now arise and report its action to the Convention.

The Chairman — The question is on the motion of the delegate from New York. All in favor will say Aye, opposed No. Carried. The Committee will rise. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. McKinney — The Convention has been in Committee of the Whole, and I am directed to make the following written report.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 777, by the Committee on State Finances, reports in favor of the passage of the same with amendments.

The President — The question is upon agreeing to the report of the Committee. All in favor of agreeing to the report of the Committee will say Aye, contrary No. The Ayes have it and the report is adopted, and the Proposed Amendment goes to the order of third reading by way of the Commission on Revision.

Mr. Wickersham — I desire to give notice that on Saturday morning I shall call up the motion made a few days ago to determine the order of business by the Convention on Saturday and after Saturday, and that it may be necessary to have a call of the House, and therefore I venture to express the hope that we may have a full attendance on Saturday.

Mr. C. A. Webber — Mr. President, I ask unanimous consent at the request of Mr. Griffin, to introduce a resolution providing for the correction of the calendar.

The President — The Secretary will read the resolution for the information of the Convention.

The Secretary — By Mr. C. A. Webber, at the request of Mr. Griffin. Moved, that in the printing of the daily calendar the pending amendment to introductory No. 679, printed No. 756, general order No. 28, from the Committee on Taxation, which were omitted from to-day's calendar, be printed until the said amendments are disposed of upon the resumption of the consideration of the said bill in general orders.

The President — Is there objection to receiving the resolution out of order? There being no objection, the resolution is before the Convention. What is the pleasure of the Convention?

The President — Is there objection to the present consideration of the resolution? All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. Any further business to come before the Convention?

Mr. Wickersham — Mr. President, I move we adjourn.

The President — May the Chair inquire whether it is the understanding of the Convention that the order is for a session at half past eight this evening, or whether that order is to be vacated?

Mr. Wickersham — Mr. President, the motion, I understood, was that in case the matter under consideration was not finished, the Convention should meet at 8:30. As that matter was finished, I presume it follows — in order to make it clear, I move that the Convention do now adjourn until to-morrow morning at 10 o'clock.

The President — Mr. Wickersham moves that the Convention do now adjourn. All in favor of that motion will say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until 10 o'clock to-morrow morning.

Whereupon, at 5:55 p. m., the Convention adjourned, to meet at 10 a. m., Friday, August 6, 1915.

FRIDAY, AUGUST 6, 1915

The President — The Convention will please be in order. Prayer will be offered by Rev. Charles L. Hall.

The Rev. Mr. Hall — It is very fitting, our Father, that we should pause a moment to recognize Thy goodness and return our thanksgiving and to invoke the continuance of Thy mercies. We thank Thee that here on our shores the experiment has been tried of constitutional government, and it has been such a success that other peoples seeking to better their condition have been following the pattern our fathers set for them to their profit. Grant, our Father, Thy blessing upon the deliberations of this body this day. Give, we pray Thee, the wisdom that is needed. May all things be done with an eye single to Thy glory, and grant, we pray Thee, Thy blessing in these trying times upon our nation and upon all the States and upon all the leaders of thought, and we pray that every influence that tends to the building up of truth and the establishment of righteousness may be owned and fostered in Thee. Hear our prayer and pardon all our sins. Prepare us for a better service; bring us to praise Thee in the Eternal World. For Thy Name's sake. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions.

Mr. Ward — In behalf of the United Spanish War Veterans, I submit the following petition and ask that it be referred to the Committee on Civil Service.

The President — Mr. Ward presents a memorial from a committee of voters and residents of the Seventh Senatorial District, which will be referred to the Committee on Civil Service.

Mr. Westwood — I offer as a memorial resolutions of the Western New York Volunteer Firemen's Association, bearing on the relation of volunteer firemen to the Civil Service.

The President — Referred to the Committee on Civil Service.

Mr. Westwood — I also offer resolutions of the Western New York Volunteer Firemen's Association in respect to jury exemption of volunteer firemen, which matter is pending before the Bill of Rights Committee.

The President — Referred to the Committee on Bill of Rights.

Mr. Bannister — Mr. President, I offer a memorial in behalf of United Spanish War Veterans in my district.

The President — Referred to the Committee on Civil Service.

Mr. L. M. Martin — Mr. President, a similar memorial from the thirty-sixth district.

The President — The memorial presented by Mr. L. M. Martin will be referred to the Committee on Civil Service.

Mr. Winslow — I desire to offer a memorial signed by various residents of the thirty-fourth district regarding the recognition of Spanish War Veterans.

The President — Referred to the Committee on Civil Service.

Mr. Bayes — I offer a memorial signed by a large number of residents of the eighth district, county of Kings, and ask that it be referred to the Committee on Civil Service.

The President — Referred to the Committee on Civil Service. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Sears — Mr. President, I ask to be excused from attendance at the session to-morrow, on account of business engagements at home.

The President — Is there objection to the excuse being granted to Mr. Sears? Without objection, the excuse is granted.

The President — Reports of standing committees. Reports of select committees.

Mr. S. K. Phillips — Mr. Chairman, I hand up the following report of the Committee on Contingent Expenses and move the adoption of the resolution contained therein.

The Secretary — Mr. S. K. Phillips, from the Committee on Contingent Expenses, to which was referred the resolution offered

by Mr. Hinman July 29, 1915, relative to the appointment of Joseph V. Allen as chief of pages, reports in favor of the adoption of the same, with the following amendment: Resolved, That Joseph V. Allen, heretofore appointed page and for some time past acting as chief of pages, be and hereby is appointed chief of pages at a compensation of \$3 a day, said compensation to date from July 1, 1915.

The President — Is the Convention ready to act upon the resolution? All in favor of the resolution say Aye, contrary No. It is agreed to.

The Secretary — Mr. S. K. Phillips, from the Committee on Contingent Expenses, to which was referred the resolution relative to printing as a document the speeches made by William D. Guthrie, D-Cady Herrick and George W. Wickersham, before the Suffrage Committee, on the subject of nominations by convention system, reported in favor of the adoption of the same.

The President — Are you ready for the question on the resolution? All in favor will say Aye, contrary No. The resolution is agreed to. Reports of select committees. Unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole.

Mr. Ryan — I would like unanimous consent to file out of order a memorial from the Spanish-American War Veterans, containing 1,800 names.

The President — Without objection the memorial will be received out of order and will be referred to the Committee on Civil Service. The Convention will go in Committee of the Whole on special order of the day, Proposed Constitutional Amendment, Print No. 785, General Order No. 44, reported by the Committee on Conservation of Natural Resources.

Will Mr. Saxe, John G. Saxe, take the Chair?

(Mr. J. G. Saxe takes the Chair.)

The Chairman — The Convention will come to order in Committee of the Whole on the special order of the day. Is the amendment moved?

Mr. Dow — I move the consideration of the proposal submitted by the Conservation Committee. Mr. Chairman and gentlemen of the Constitutional Convention, I shall talk very briefly regarding our proposals in general, after which I will move the consideration of the proposal section by section. "A state," says Burke, "without the means of some change is without the means of its own conservation," and your Committee, in considering the problem submitted to it, has sought merely to make such changes as the welfare and the consistent policy of the State demands in reference to its natural resources. The principle underlying conservation is not new in the law of this State. It is present in

that vast back-ground of the common law which underlies our whole system of jurisprudence, and is conspicuously present in the law of water and water-courses. What we know as conservation was known to the common law as usufruct — the preservation of the particular estate, while making use of it for the well-being of the individual and the State. Its early found statutory expression in the policy of the State toward the salt springs, conveyed to the State by the chiefs of the Onondaga Indians in September, 1788. The State appears to have undertaken the manufacture of salt in that same year, two persons being appointed for that purpose, but in 1797 the Legislature passed an act requiring the surveyor-general to survey the salt lands and lay them out in lots of not more than ten acres, which were leased to various holders. These leases were originally made by the superintendent of the salt works, who received a salary of \$800, but in 1811 an act was passed providing that such leases should only be made in pursuance of an award made by commissioners, and this was continued in effect by the Revised Statutes of 1813. When we keep in mind the fact that the policy of the State of New York, which abandoned the control of the salt springs as a constitutional provision in 1894, was resumed on a broader basis in respect to its entire natural resources in that same year, the conservation provision taking the place of the old salt springs article in the Constitution which went into effect on the 1st day of January, 1895, it is interesting to note that we are but following the precedent established in the conservation of the salt springs reservation. By the Revised Statutes of 1813, it is provided in reference to the salt springs reservation, that it "shall be the duty of the superintendent to give directions from time to time respecting the cutting of timber and wood on said reservation, and to determine the parts or places on said reservation where the timber and wood may be cut for the use of salt manufacturers, and the size of the wood or timber to be so cut; and also to direct in what places the wood and timber shall be preserved for growth, and where it shall not be cut; and if any lessee, manufacturer or other person shall fell any timber or wood, or shall take and carry away any timber or wood, saplings or poles, from any place or places where the superintendent shall have directed the timber and wood to be preserved for growth, each and every person so offending shall forfeit and pay the sum of \$5 for each offense, and treble the value of such timber, wood, saplings and poles so cut and carried away."

It was further provided that, except for the use of the manufacturers of salt, and those otherwise lawfully upon the reservation, that any person cutting or destroying any wood or timber, saplings

or poles, standing or growing on said reservation, or who should carry away any timber, wood, saplings or poles which may be lying on the lands in said reservation, should be penalized to the extent of \$10 for each offense, and treble the value of the timber so taken, and be liable as for a misdemeanor. It thus appears that more than 100 years ago the people, by their representatives, recognized the policy of conservation; that they recognized in the growth of the public forests a peculiar value, different from that which attached to mere private woodlands, and while they had not at that time arrived at a full understanding of the problem as it is presented to-day, they unquestionably recognized the value to the salt springs reservation of conserving the timber resources. More than \$2,000,000 of the original canal fund was derived from the revenue of the salt springs, and the same principle of conservation runs through the canal policy which characterized our early treatment of the salt springs, when the sources of supply were supposed to be limited. While our navigable communications were in a measure artificial waterways, they were designed to utilize the waters of the State. By a system of impounding waters and controlling their flow, it was sought to conserve the resources of the State and make them tributary to the common weal. The canals were the means of bringing to a higher efficiency and worth the transportation values of the Hudson and other rivers, in connection with the Great Lakes, at a time when economic and patriotic considerations demanded the development of the northwest in the solution of the great problem of human slavery. To-day we are seeking by an intelligent application of the resources of the State to preserve those inland lakes and rivers which made the canals possible; we are awake to the truth that it is necessary to the maintenance of living waters and their economic flow, touching vitally every interest of the State, that the forests — the one product which the towering hills may grow — shall be preserved inviolate forever.

This policy had its inception in the constitutional history of this State as early as the Constitution of 1821, and our efforts to-day are merely carrying to their logical conclusions the work and the development which have gone before. When in the Constitution of 1821 it was provided that certain tolls and duties arising from the operation of the "navigable communications" and the manufacture of salt at the State springs, should be devoted to the payment of the debt created for the construction of the canals, and that "the Legislature shall never sell or dispose of the salt springs belonging to this State, nor the lands contiguous thereto, which may be necessary, or convenient for their use, nor the said navigable communications, or any part or section thereof; but the same shall be and remain the property of this State,"

where there was prophecy — aye, the promise — of modern conservation. There was, in the mutual agreement of the owners of these waterways that they should be withdrawn from the power of the Legislature to dispose of them, an implied promise that they should be efficiently maintained; that they should be dedicated to the common welfare of all the people — should be enlarged and improved to meet the expanding commerce of a great State. Underlying this promise, constituting its very essence, was the pledge of the sovereign power of the State that the public waters, without which the canals could not exist, should be conserved and developed, if need be, for the common good. This pledge could not be kept by a mere impounding of the flood waters of denuded watersheds in stagnant pools, to be doled out for purposes of transportation, in disregard of the rights of riparian owners and the welfare of the State.

It required for its performance the perpetuation of living streams, the preservation of those conditions of nature which alone make possible a healthful and sustained water supply, and this involved the forest. It is true, no doubt, that the founders of the canal policy did not look forward to the conditions of to-day; they did not foresee a great municipality embracing one-half the people of the State, requiring an artificial water supply equivalent to the flow of many considerable streams, with many other cities making large and increasing demands upon the water resources, but in the dedication of the public inland waters to the canal system there was the obligation assumed by the State to preserve to all of the people the full enjoyment of the public resources. There was the duty to so use the waters of the State that they should, while affording an economical means of transportation, at the same time minister to the needs of all of the people, and the only means to this end was to perpetuate the forests in those portions of the State which were incapable of producing a better crop, through the purchase of the lands of individual owners. During the time that such lands were held in forest by the individual owners they served the purpose well; the people of the State were using the woodlands of the Adirondacks without impairing their value — they were getting the usufruct. But when the timber became valuable, and the woodman invaded the scene, the work of transforming the forests into merchandise, exposing the hilltops and the slopes to devastating fires, began to tell upon the water supply, and gradually the Legislature awoke to the necessity of conforming to the obligation assumed in the canal policy of the State, with the result that a forest preserve was established.

It is rather remarkable, looking back from the vantage ground of to-day, that the Constitutional Convention of 1894 should have taken the stand that it did upon this question. The problem of conservation was at that time largely academic; the public scarcely realized that there was a serious problem confronting it, and a large portion of that body looked upon the whole matter as of very little importance, though willing that the men who were interested in the problem should have their way about it. The result was a wise and conservative provision, in the then state of the public mind, entirely in harmony with the general policy of the State as indicated. The same policy of withdrawing the Forest Preserve from the power of the Legislature was adopted which had been previously adopted and all along maintained in reference to the canals. It provided simply that the "lands of the State, now owned or hereafter acquired, constituting the Forest Preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed." There was a recognition of the duty of the State to preserve its forests as an incident to the conservation of the water supply both of the canals and of the municipalities of the State, though at that time no one, outside of a small group of students, had any conception of scientific forestry and of the important relation which a sustained water level bears to the agricultural interests of the people.

The same Constitutional Convention which adopted the provision thus quoted made provision for a further development of the canal system of the State, with its incidental further charge upon the water resources, and with the additional pledge of a sustained flow of the rainfall in the channels of peace, industry and prosperity. The industrial and economic integrity of the State was put under a new obligation. It was to open the way to the economical transportation of the products of the northwest to the seaboard; it was to undertake practically a development of the interstate commerce at the expense of this Commonwealth, and it would not have contemplated this additional drain upon the water supply of the State, without the implied promise to the agricultural and industrial citizenship of the State — to its citizenship generally — that the vivifying waters should be supplemented and maintained through an intelligent and statesmanlike husbanding of the forest resources of the State. This Convention came to its task of providing for the fulfillment of these obligations with a fuller knowledge of the requirements of intelligent forestry; a fuller realization of the relation of healthful forests to a healthy State, entering into every manifestation of individual

and community life, and your Committee, in its many hearings, has gathered a fund of information upon the consideration of which has been builded the proposition which we herewith submit. We do not present a radical proposition; we do not claim any great degree of originality, but rather an unfolding of the public policy of the State in line with that which has preceded, and which experience and increasing knowledge has demonstrated to be needed if a harmonious whole is to be preserved. The provisions now found in the Constitution, if supported by a public sentiment which would forbid that constitutional tinkering which is fast becoming a greater abuse than legislative discretion, and construed in harmony with the broad underlying policy of the State as evidenced by more than a century of statutory and constitutional law, would go far to bring about the desired condition. The difficulty is, however, that this interest is so large, and at the same time so little understood by the people, that it is not safe from either of these dangers. It is probably unknown to a majority even of the members of this body, that except for one of those errors which so often interfere with the selfish purposes of man, there would now be before the people of this State for ratification a provision which practically nullifies the present provisions of the Constitution in reference to the wild forest lands.

The measure had its inception prior to the calling of this present Convention, and experience shows how little chance there is of defeating a constitutional provision, which may be ratified by a mere majority of the comparatively few who ever take the trouble to vote upon these propositions. The provision I refer to was adopted by the Legislature of this State as a concurrent resolution in 1913, and was readopted by the Legislature of 1915, but in such an erroneous manner that under the ruling of the Attorney-General it has been held to be without proper legislative sanction, and, therefore, not to be submitted to the voters. This Proposed Constitutional Amendment, which has familiar earmarks to those who are interested in preserving to the people their rights in the public resources, provides that the "prohibition of Section 7 shall not prevent the cutting or removal of mature, dead or fallen timber or trees detrimental to forest growth, on lands constituting the Forest Preserve, nor the leasing of camp sites and the construction of roads and trails necessary for protection against fire, and for ingress and egress. The Legislature may authorize the sale of lands outside the limits of the Adirondack park and the Catskill park as such parks are now constituted by law. The proceeds of such sales of lands shall be set apart in a separate fund and used only for the purchase of lands or for reforestation in such parks." How many of you — how many of

your particular constituents — gentlemen of this Convention, had any knowledge of the fact that the provision above quoted had been twice adopted by the Legislature of this State? Yet that is the public record, and the only reason it is not now before the people, with the almost certain result of ratification, is the fact that there was an error in the method of re-enacting the proposition. We are constantly confronted by this danger, through the disposition of the legislative bodies to shirk responsibility by referring proposed amendments to the people. If two distinct Legislatures believe that an amendment to the Constitution is necessary and proper, and such proposal is ratified by the people, it becomes a part of the Constitution, but in practice the Legislature does not pass upon the merits; it simply takes the formal action at the instigation of selfish interest, which is necessary to get the proposition before the electorate, and then it only requires a majority, not of the voters appearing at the polling place, but a majority of those actually voting upon the particular proposition. The man who is content with things as they are, or who is ignorant of the fact that such an amendment is pending, or assumes that the Legislature has, in fact, discharged the duty of determining upon the desirability of the proposed amendment, does not vote, or, if he does, votes in the affirmative along with the selfish interests involved, with the result that provisions find their way into the fundamental law which the Legislature would not itself dare to enact into statute. No one believes that the Legislature of 1913, and again in 1915, would have assumed the responsibility, in the absence of constitutional provision, of enacting the provisions above quoted. But under the pretext of submitting to the higher will of the people, a large majority have stood sponsor for this most vicious raid upon the resources of the State, clearly demonstrating the wisdom of certain honorable members of the present Convention who, twenty-one years ago, attempted to provide against this particular abuse by requiring a real ratification of the electors for proposed amendments to the Constitution.

For some reason, not so fully obvious, our Attorneys-General, and recently our court of last resort, have shown a disposition to overlook the interests of the people in the Forest Preserve, and to apply rules to this special property value which, if persisted in, will result in great injury to the woodlands of this State. Both the Third and Fourth Departments of the Appellate Division of the Supreme Court in recent decisions have recognized this special property value, but the Court of Appeals, in both cases, has overruled the decision, and has held that the measure of damages, where the trees are destroyed through negligence in starting forest fires, is merely the "difference between the market value of the

land of which the timber was a part immediately before, and its market value immediately after the burning, and that Section 7 of Article VII of the State Constitution, which prohibits the selling, removing or destroying of timber on the lands constituting the Forest Preserve, has not prescribed any other rule as to such lands" than that which prevails in reference to private lands, where the salvage value of the burned timber is permitted to offset the damages. This determination leaves entirely out of view the element of public policy — the importance to all the people of the State of conserving the forests — the value of forests to the State, as distinguished from their value as timber upon the stump in remote places. To my mind, if, through the negligence of any person or corporation, the timber lands of the State, held in reserve for the purpose of conserving the welfare of all the people, are destroyed, the wrongdoer should be called upon to pay the value of the destroyed property, not what it would sell for in a local market for timber, but its conservation value; what it stands for in its relation to the preservation of the almost limitless resources of the State. As Mr. Justice Woodward said in a recent discussion of this question in the case of *People v. New York Central & Hudson River Railroad Company*, 161 App. Div. 322, the "damages is not to timber, but to the estate. The public policy of the State, the necessity for recreation grounds, for adequate supplies of pure and wholesome water, have combined to give to timber land in certain portions of the State a value entirely independent of the market value of the timber on such lands. The value is found in the timber as such, not in the land, as land, but in the combination of land and forest, conserving the water supply and preserving the game and the opportunity for recreation and this Forest Preserve has a value just because it is forest; because of the number of trees, their kind, their age, their healthfulness, etc., in conjunction with the land, and not because of any particular price that the trees would bring if taken to a saw mill. * * * It is not the land nor the trees, as such; it is the 'wild forest lands' which have the value to the State. These trees are taken out of the market entirely; they are not to be 'sold, removed or destroyed,' and for this reason the defendant is not entitled to any salvage. It has destroyed some portion of the plaintiff's 'wild forest lands' because it has killed the trees which make it such forest land, and these trees, as timber, have been wholly withdrawn from the market, the defendant is bound to pay the damage, not to the timber, but to the 'wild forest lands,' and that damage is the difference in the value to the plaintiff between the land with the growing forest and the land as the foundation for a new forest, which must be planted in order to maintain the tract for the purpose for which it was set apart by the people of this State. * * *

The defendant could not lawfully buy this timber; it could not take it under its general power of eminent domain for the purposes of its railroad; it is not property to be disposed of, but finds its peculiar value in the fact that it helps to constitute the 'wild forest lands' of the State, and the true measure of damages is not the land and the trees as agricultural land and timber (the timber being estimated at its growing value before and its burned timber after the fire), but is the value of the entity known as 'wild forest lands,' before the burning and after it, and this is what the land is worth for 'wild forest lands,' with the wild forest killed, and only to be replaced by time and the expenditure of money. Neither the lands nor the timber can be put to any other use; in contemplation of law it has no existence as property except for the limited purposes to which it is dedicated, and if individuals or corporations will commit trespasses upon this sacred preserve, they must expect to compensate the State of New York for this peculiar value, without diminution or salvage from the timber which, in the law as it now stands, is not timber, but an ingredient of the 'wild forest lands' which it is the policy of the State to preserve in the higher interests of the defendant and others within the State." The Court of Appeals suggests that the State has not, through its Constitution or laws, placed this special value upon the Forest Preserve, and, therefore, that the only rule of damages is that which would prevail in the case of the ordinary destruction of private woodland, but it seems to me that this is overlooking some very important considerations. Passing over the obvious proposition that it is not the province of a Constitution to lay down a rule of damages for the wrongful destruction of the property of the State, it may be observed that a private woodland, denuded of its trees, may be put to some other purpose immediately. The owner may make use of the killed timber, or he may find a market for it, thus reducing his actual loss. The Forest Preserve trees may not be disposed of; the State cannot, by a sale of such timber, reduce its losses. It may not even dispose of them for the purpose of securing the money to replant the burned territory. They stand as a dead loss, plus the cost of preparing the land and replanting the same, with the years of intervening time before the forest can be made to serve its conservation purposes, yet it is held that we must allow the salvage value of trees thus destroyed, notwithstanding that there can be no lawful market for such timber. It may be the rule of law, that it is the duty of one injured to make the damages as light as reasonably possible, and, if the State was permitted to go into the market with its burned timber and sell the same, it would undoubtedly be its duty to make a reasonable effort to do so. But

the Constitution says this shall not be done, and the Court of Appeals holds, notwithstanding this fact, that the wrongdoer is entitled to the benefit of the market value of the burned trees. In other words, the State, desiring to preserve the "wild forest lands," and to this end withdrawing the timber from the markets, must suffer a portion of the loss inflicted by one who has committed a trespass upon its property. On one side the people say that it is not the duty of the State to sell or dispose of the timber in any manner whatever; it is to stand forever as a protection to the lives and property of all of the people. On the other, the Court of Appeals says that notwithstanding this obvious purpose to establish a new measure of damages for this peculiar property right of the State, the individual or corporation may, in disregard of this right, negligently destroy such special value, and then be entitled to a rebate for value of the burned timber. This is equivalent to saying that a wrongdoer may compel the sale of the timber, for if he may have the benefit of the undestroyed value, he, in effect, is compelling the sale of so much of the "wild forest lands" as is represented by this salvage. But the sale, while benefiting the wrongdoer, does not help the State; it has to pocket its loss. It is not permitted to be made whole. It may refuse to sell the timber, but if some one wrongfully destroys its life, although it is still inhibited the power to dispose of it, the wrongdoer is not compelled to reimburse the loss, and the State might as well let the fire perform its full destruction. Obviously the court in attempting to apply a rule which might approximate justice as between private owners of comparatively small wood lots and wrongdoers, has overlooked considerations of a controlling character, and has placed an impediment in the pathway of true and statesmanlike conservation. Suppose, for instance, that through the negligence of one or more persons or corporations the entire Forest Preserve should be destroyed. Can it be possible that the wrongdoers would be entitled to have their damages measured by the rule which the Court of Appeals has laid down? The entire agricultural and industrial life of the State is bound up in the preservation of our water supply, and this in turn is dependent upon the preservation of the forests which conserve the flow from the vast northern watersheds. The city of New York, vitally related to every individual in the State, the Hudson and its tributaries, the whole system of canals depend upon this policy of conservation; depend upon the preservation of the great forests and the living streams. The destruction of these would be far more fatal to the well-being of the State than the destruction of the great city at the mouth of the Hudson, for that could, and would be, built, and in some respects to the advantage of the city. But the magnificent forests once gone, would be gone for ages; it would

be almost impossible to replace them, and certainly not within the lifetime of any one now living. It is the policy of the State to preserve this immeasurable value, and I may be pardoned for suggesting, from the standpoint of a business man, that it is the duty of the courts to enforce this policy by calling upon those who destroy any part of this heritage of the people to make good the loss sustained by the State.

Partially on account of its attitude on the part of those wielding authority, your Committee on Conservation has felt that it was necessary to vest in some relatively permanent body the power necessary to carry into effect the letter and the spirit of the present provisions of the Constitution, with such additional duties as might from time to time be added by the Legislature. That the plan suggested is open to the objection that it is in a measure legislative in character is conceded, but against this we place the consideration that the preservation of the natural resources of the State is of the highest possible importance, because of the practical impossibility of replacing them when once destroyed, and the persistent effort of selfish interests to exploit them in utter disregard of the welfare of the State as a whole, makes it necessary that the problem of conservation of resources, requiring special preparation and consistent administration, should be taken out of the realm of active legislative regulation and become in a measure static. We hold with Marcus Aurelius that "what is not injurious to the city cannot injure the citizen," and as a definite policy, however faulty in details, is preferable to no policy at all in respect to this important question, we are of the opinion that the plan suggested is not injurious to the State, though encroaching somewhat upon the legislative function, and is not, therefore, dangerous to the citizen. The present provision of the Constitution, as construed by various Attorneys-General and the courts, is not fulfilling the imperfectly conceived public policy of the State, though a great improvement upon the previous policy of leaving the question to be dealt with by successive Legislatures. While conceding the wisdom and the patriotism of the average Legislature, one vicious session is capable of working such havoc with the resources of the State that where the problem is of vital importance to all, with no special interest in any individual, aside from selfish ones, which prompts that watchfulness which is always present in matters involving taxation, it is often of the highest importance to place the matter where it cannot be abused without such a sense of personal responsibility as to afford a higher degree of protection than is possible in a legislative tribunal. This was the policy of the State in respect to its canals; it is the policy adopted by the Legislature

itself in respect to Niagara falls, after a long campaign of education, in which public sentiment demanded the preservation of this magnificent cataract. We are simply seeking to crystallize this policy in the fundamental law of the State in respect to a question which comes near to the real interests of every individual, though but dimly sensed by a vast majority, and we look to the wisdom and the patriotism of this Convention for that sanction which shall commend the system to the people of this State. The plan which we have suggested, after considering many, is that of a commission to consist of nine members, one from each judicial district, appointed by the Governor, and so arranged that one only shall retire each year. These commissioners are to serve without pay; they are to find their sole reward in the public approval and the consciousness of duty well and faithfully performed; they are to stand before the public in the idealism of the best days of Grecian statesmanship, the unselfish guardians of the State's great wealth of natural beauty and utility. This commission is to be a constructive body, exercising a judicial function — judgment. It is not an administrative office, which can be satisfied with one head; it must take into consideration lands, timber, forests, rainfall, fish, minerals, mines, storage reservoirs, protection of watersheds and hydro-electric and other powers, and it will be readily seen that it must have the judgment of several men, if the best results are to be attained. The solution of the problem of water conservation does not depend upon expert talent; it depends upon the intelligence and wisdom of a body of men competent to sit in judgment and crystallize opinion into action. Such experts as are needed may be employed from time to time, but the commission should not be made up of specialists, but of independent, nonpartisan men, experienced in large undertakings. In a word, they should be men trained in general affairs, for the success of such an undertaking largely depends upon the judgment of men uninfluenced by the pride of professional training. Therein lies the danger of a single-headed commission. In point of dignity and usefulness this commission will stand upon a par with the State Board of Regents, and will call to the service of the State men of recognized standing and worth. They are to have, subject to the limitations of the article, full charge of the "development and protection of the natural resources of the State, the encouragement of forestry and the suppression of forest fires throughout the State; the exclusive care, maintenance and administration of the Forest Preserve; the control, conservation, prevention of pollution and

regulation of the waters of the State; the protection and propagation of its fish, birds, game, shellfish and crustacea, with the exclusive power, subject to the veto of the Governor, to enact regulations with respect to the taking, possession, sale and transportation thereof, and shall exercise such additional powers as from time to time may be conferred by law." These provisions are, of course, all subject to the indirect control of the Legislature, by reason of the fact that we make no provision for raising the funds necessary to carry on the work. The commission is to "be charged with the development and protection of the natural resources of the State," and to have exclusive powers in respect to the manner of performing these duties, but it must always have the sanction of the Legislature through its power over the revenues of the State, so that there is no room for an abuse of the powers conferred. In effect, it is provided that whatever is done in respect to the development and protection of the resources of the State shall be done by this commission, but the extent to which the work may be carried on must at all times depend upon the amount of money which the Legislature is willing to devote to the work. The commission itself being subject to no radical changes in its personnel, it is conceived that there will be fixed policy, and while the Legislature may, or may not, provide the funds necessary to accomplish the full purposes of the commission, whatever is done will be carried on along the lines of the established policy; there will be unity of purpose in all that is undertaken, with no retrograde steps. The natural resources, if left to themselves, will not deteriorate to any great extent in a single year; if funds should be withheld the commission would simply await a more favorable time. It is the danger of selfish interests intruding that is to be guarded against, and we believe the system here presented accomplishes this purpose. The provision permitting the commission to regulate the taking, possession, sale and transportation of fish and game, which, in a state of nature, belong in common to all the people, gives a reasonable assurance of a settled policy, upon broad lines, for this much vexed problem, where local and selfish considerations are constantly seeking some special recognition in disregard of the higher rights of the State at large. In order to accomplish the purpose for which the commission is created, and to avoid political influences in dealing with this vast resource, we have provided that the commissioners shall appoint, and may at pleasure remove, a superintendent, and may appoint, under civil service regulations, all necessary subordinates, and fix their compensation. The superintendent will be the executive head of the department, and acting in a confidential relation to the commissioners, he may be expected to express the best judgment of the body as a whole in the work of conservation.

Any effort to place the superintendent under the control of the political organizations of the State is an effort to emasculate the system which we have sought to develop and extend in reference to the natural resources of the State, and it will command the disapprobation of every man who has ever studied this question from the standpoint of patriotic statesmanship. The true principles of conservation require that there shall be a body of conservators who shall be dedicated to this work as a patriotic service to the State, and unless their judgments can be carried into effect by one who is in harmony with this high purpose, it were better that things should remain as they are until the growing public interest in this problem shall make impossible the selfish purposes of those who would denude the State of its timber for immediate profit. A superintendent appointed by any other power than that of the commission would simply mean that the political party in power would control the public resources in the interests of private individuals, and vast harm could, and no doubt would, be done, before the public would realize that the abuse was going on. It is a mockery to give large powers to this commission and then make the execution of these powers to depend upon one who owes his position to an appointing power other than the commission. It is hostile to the very purpose for which we have labored, and makes a farce of the policy which we are seeking to formulate and make effective, and it is not possible that such is the deliberate judgment of this Convention. We have retained the language of the present Constitution, adding the words, "trees and" for the purpose of making more inclusive the scope of the provision; and, to obviate some of the narrow constructions which have been placed upon the present Constitution, we have added that the "commission is, however, empowered to reforest lands in the Forest Preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely, but shall not sell the same." This is not in spirit new matter; it is merely the intelligent and practical construction of the present provisions, if we are to have real conservation. It is the construction, no doubt, which the framers of the original provision would have put upon it had they been called upon to define the intent of the enactment, and so long as we do no more than the legislator would have done, contemplating the same facts and circumstances, we "do not act contrary to the statute, but in conformity thereto," as Lord Bacon has aptly said.

We have likewise retained the amendment made to the Constitution in 1913, effective January 1, 1914, relating to the power of the Legislature by general laws to set apart a small portion of the Forest Preserve for reservoirs, etc., and have added a provision that the "Legislature may authorize the use by the city

of New York for its municipal water supply of certain lands now belonging to the State located in the townships of Hurley and Shandaken in the county of Ulster and in the township of Lexington in the county of Greene, for just compensation," and we may even look forward to the time when the expanding city of New York will be obliged to seek in the Adirondacks an adequate supply of pure and wholesome water. The provision quoted is in the nature of an exception to the limitations placed upon the Legislature in the previous paragraph, and seems to be justified by the necessities of the case. It is assumed, however, that the Legislature will grant this privilege in harmony with the general policy of the State, which seeks the highest utility for its natural resources, and in such a manner as not to seriously interfere with the general purposes for which the lands are held. It will thus be seen that there is very little that is really new in the report of the Committee, except the administrative board and its powers, and these are all supported by precedent throughout the legislative and constitutional history of the State. We have sought by constitutional amplification to get the true construction upon the Constitution as it now is, in conjunction with an administrative agency adapted to the perpetuation of the spirit of the movement for the preservation of the natural resources of the State, and we have faith that the method we have indicated will, if adopted by this Convention and ratified by the people, accomplish the result. In this connection we have thought it wise to embody a further provision for the enlargement of the Forest Preserve, by the purchase from time to time of lands adapted to forest development. This investment in lands and forestation gives promise—an assurance, rather—of a legitimate return from a business standpoint, embodying the elements of security, of continuity, and of a reasonable return, ranging from 4 to 5 per cent. We believe that these results may be attained by the individual who makes an intelligent investment in the average forest lands of this State and handles them in a business-like manner upon any extensive basis, and lands which will produce this value to the individual may safely be included in a permanent investment by the State. One of the prime objects of the Department of Conservation is to protect the forests of the State from destruction by fire, and to this end we should engage the selfish interests of the individual owners, as well as the resources of the State. Under the Proposed Amendment we are to give to the commission the authority to cut fire trails, and to cut out such dead timber as involves danger to the tract, obviating the danger of abusing this power by withdrawing such dead timber from the market, and to make use of the resources of the State in patrolling and fighting against the spread

of fires in the timber lands of the State. Experience in the domain of national forestry has demonstrated that public example has been followed by individuals, with the result that large annual losses have been materially decreased through the activities of private owners of timber tracts.

A strong appeal has been made for a modification of the language of the present Constitution in behalf of those desiring camp sites, and many reasons, some of them most persuasive, have been urged, but in the judgment of your Committee such a modification would not be wise or expedient. It seems to your Committee that the liberal construction which should be placed upon a remedial provision of the fundamental law, designed to protect the people in their collective right of property, will amply provide for all that is advantageous in the proposed leasing of camp sites, while protecting the State fully from an abuse of such privileges. The language of the proposition is that "subject to the limitations in this article contained, the Department shall be charged with the development and protection of the natural resources of the State; the encouragement of forestry and the suppression of forest fires throughout the State; *the exclusive care, maintenance and administration of the Forest Preserve*; the control, conservation, prevention of pollution and regulation of the waters of the State," etc. That is, this Department is to have all of the powers which the Legislature now has in respect to the Forest Preserve; subject to the limitations of the article, it is to have "the exclusive care, maintenance and administration of the Forest Preserve." It is to be in possession of the premises as the representative of the State of New York, just as the old superintendent of the salt springs was in possession of that reservation, and this commission would have the same power to license persons adapted to the work of fire fighting, or of aiding in the "care, maintenance and administration of the Forest Preserve," that the Legislature had to permit of such licenses to those who were to engage in the manufacture of coarse salt to the Onondaga springs. (See *Newcomb v. Newcomb*, 12 N. Y. 603.) The commission being given all power over this property which is not specifically withheld become in effect the trustees of the people in the management of this Forest Preserve. The whole problem is turned over to the commission, subject to the limitations fixed by the Constitution itself, to be worked out in harmony with the general plan, and we believe this is the intelligent solution of the question. We are seeking the conservation of the natural resources of the State; we are trying to place in the hands of a board of trustees the necessary powers to make this property serve its highest purpose to the people of this State.

Mr. Chairman, I move the consideration of these propositions, section by section.

The Chairman — It is moved that the amendment shall be read and considered section by section. Those in favor of the motion will say Aye, contrary No. It is carried.

The Secretary will read the first section.

The Secretary — Section 1. The Department of Conservation shall consist of nine commissioners to serve without compensation and to be appointed by the Governor for terms which shall expire in nine successive years, the first ending on January 1, 1917, and their successors shall be appointed for terms of nine years. Vacancies shall be filled for the unexpired term. One commissioner shall reside in each judicial district. They shall be subject to removal by the Governor on charges, after an opportunity to be heard. Subject to the limitations in this article contained, the Department shall be charged with the development and protection of the natural resources of the State; the encouragement of forestry and the suppression of forest fires throughout the State; the exclusive care, maintenance and administration of the Forest Preserve; the control, conservation, prevention of pollution and regulation of the waters of the State; the protection and propagation of its fish, birds, game, shellfish and crustacea, except migratory fish of the sea, within the limits of the marine district, with the exclusive power, subject to the veto of the Governor, to enact regulations with respect to the taking, possession, sale and transportation thereof, and shall exercise such additional powers as from time to time may be conferred by law. The Department shall appoint and may at pleasure remove a superintendent and fix his compensation. It may also appoint all other necessary subordinates and fix their compensation. The Legislature shall not at any time exempt from the regulations of the civil service, any employees of the Conservation Department except the superintendent, temporary emergency employees and laborers.

Mr. Parsons — Is it the intention of the provision in lines 12 and 13 of page 2 to deprive the Legislature of the power to annul or vary any regulations that may be adopted by the commission — by the Department of Conservation?

Mr. Dow — What are the lines?

Mr. Parsons — Lines 12 and 13 read thus,—from line 1 it says, or line 3, "Subject to the limitations in this article contained the Department shall be charged," and so on, and then in lines 12 and 13, "with the exclusive power, subject to the veto of the Governor, to enact regulations with respect to the taking, possession, sale and transportation thereof."

Mr. Dow — That is the intention.

Mr. Parsons — Why should the Legislature be deprived of all power to legislate in regard to such matters?

Mr. Dow — The intention of the proposition is to put the exclusive power in the hands of the commission.

Mr. Parsons — Is not that a power which has not been placed with any other body?

Mr. Dow — I could not answer that question.

Mr. Parsons — As I understand, the Board of Regents, which has great power, none the less is subject to the control of the Legislature, if it sees fit to exercise it.

Mr. Dow — That would not be the case here.

Mr. Marshall — Mr. Parsons, that proposition will be fully discussed, if you will permit the interruption, by those who have gone into that subject more carefully, later in the argument. I think probably Mr. Baldwin will be able to inform you on that subject.

Mr. Parsons — Might I ask one other question? This relates to the last sentence in the first section, which says: "The Legislature shall not at any time exempt from the regulations of the civil service, any employees of the Conservation Department, except the superintendent, temporary emergency employees, and laborers."

Mr. Dow — The emergency employees are people living in that region called upon at frequent and infrequent times to assist in putting out fires.

Mr. Parsons — Does that include fire wardens?

Mr. Dow — I think it would.

Mr. Marshall — Not the fire wardens.

Mr. Parsons — Are not the fire wardens now exempt from the civil service, appointed without it?

The Chairman — The delegates will address the Chair.

Mr. F. L. Young — Mr. Chairman, I rise to a point of order. The Secretary was reading this section as directed by the Chair and was interfered with by the asking of questions. I think these questions may be deferred until the article has been read.

The Chairman — The Secretary has completed the reading of the first section.

Mr. F. L. Young — I did not understand it so. He stopped at the word "law".

The Chairman — The Secretary informs me that he finished the reading of the section.

Mr. Parsons — I will not ask any more questions.

Mr. Quigg — Mr. Chairman, I should like to ask the chairman of the Committee precisely what is a marine district. I call his attention to line 11, "within the limits of the marine district."

The Chairman — Does the delegate from Chautauqua desire to answer a question at this point?

Mr. Dow — Mr. Chairman, the intention is to avoid jurisdiction over the migratory fish of the sea caught within the marine district which is the three mile limit.

Mr. Marshall — The language to which the gentleman from Columbia has directed your attention is language which is taken literally from our present Fish and Game Law. It has existed for a number of years. It has been found that a different rule should exist and necessarily must apply to the migratory fish of the sea that are caught within what is called the limits of the marine district, which is the three-mile limit, and the reason why that distinction is made is that it is practically an impossibility to deal with the migratory fish, and because the catching of those fish is really an industry and therefore comes under entirely different principles from dealing with the protection of fish, birds, game, shellfish and crustacea, which are not, in the sense that the catching of migratory fish is, an industry. If it is true, as I learn from one who is an expert in fishing, that the marine district extends to Verplanck's Point on the Hudson river, therefore that exception is made; and I may inform the gentleman, largely at the instance of Long Island fishermen engaged in that industry and their claims were very admirably presented before our Committee by Mr. Pelletreau and by Mr. McKean, who will be able to give you further information upon that subject.

Mr. Quigg — I will detain the Convention only once, but I want to make a motion to strike out the words in line 10 "except migratory fish of the sea within the limits of the marine district" and on that I shall request to be heard after the gentleman from New York has concluded.

Mr. M. J. O'Brien — Mr. Chairman, I should leave the discussion of this subject to the gentlemen of the Convention who are very much more conversant and whose knowledge is more extensive on this whole subject of conservation, but it is proper that I should say a word because I am in favor of the report as it has been presented to this Convention, after having had the benefit of the experience and the views of some of the ablest men in this country on the subject of reforestation, on the subject of protection and propagation of fish and game and on the subject of the preservation of our forest preserves. There was an honest difference of opinion, as you gentlemen will see from the minority and majority reports. But for those who, like myself, had only that knowledge which comes from the delight and the pleasure we have in visiting the Adirondacks, in gliding over those beautiful lakes in canoes and boats, those who gain knowledge of

the Adirondacks from its sports, its game, its fish, it has never been brought home until lately to all of us, many of us thus engaged even, the immense importance of these great preserves to the health and prosperity of our Commonwealth. Prior to 1894 this State was engaged in a policy which if continued would have imperiled the lives and the health of all our people. The relation of forestry to stream flow, the relation of water to health; those subjects thirty years ago were understood by but a few, now the knowledge is in the possession of many. Most of the head waters of the streams of this State take their rise in and their flow is regulated by the forests in the north. When we come to the question of the policy that was pursued in the period prior to 1894, when the people, aroused to a sense of the destruction which was being carried on and the waste of the natural resources of the State, took up this whole question, prior to that time the State had practically given up all of its forest preserves. It had sold those lands. They had been wrested from the State by lumbermen and those who had exploited the State's resources to their own enrichment and the impoverishment of the people of the entire State, and I say to you gentlemen of the Convention who, like myself, may not have paid particular attention to the details, that hundreds of thousands of acres were stolen from the State of New York and placed in private hands, lands that had subsequently to be repurchased at a very large expense for the purpose of maintaining the health and stream-flow and life of the people throughout our entire State. I am not going into that history because it was all presented in the report and in the summary of the proceedings of the last Convention, further than to say that whatever other thing is in dispute, when we come to the question that divided the Committee, as to the true policy that should be followed in preserving the forests of this State, every gentleman will have in mind, no member of the Committee, no gentleman who appeared before us to give us information upon the subject, not a single man but paid a tribute to the patriotism and to the honesty and to the intelligence of the men who framed the Constitution of 1894. The men of that Constitutional Convention were confronted with evils which before that time had existed and as the result of which this tremendous loss had been placed upon the State. Then the State turned around and inaugurated a more sane and more politic way of dealing with these great questions. So, from time to time as appropriations could be secured from the Legislature, lands in these parks, the Adirondack and Catskill, were purchased, and the Forest Preserve was fixed and defined by law. Now, in the upbuilding of that, suggestion is made that that policy which has been pursued

for twenty years and which at least has given us the hope and the assurance that, if continued, we will have that for which the men who framed that Constitution worked — the suggestion is made that now we should advance on an opposite policy: That period of twenty years, representing two generations, has produced in those forests some trees, which might, without harm, be cut; which might produce some revenue; that might result in a fund being obtained which would enable them to purchase additional forest land; and along that same line, those who differed with us on the Committee have felt that it was important that the people should have the right to go there and have camp sites; that roads should be cut through these forests, and, soon, a number of other propositions. But I suggest to you, gentlemen, that every time a proposition was made there, it involved the question of putting the axe to these forests. It meant going back to the old policy. You cannot secure the safety which has now been secured under the provisions of the present Constitution. You cannot any more liberalize, as it is attempted to do here, in the provisions proposed, with the exception that the Legislature might, as has been suggested, permit the construction of a road for the purpose of connecting up two existing roads for a distance of possibly twenty-five miles. You cannot open the door to a new policy without imperiling all that has been done in the last twenty years. Twenty years seems long, but that is not long in the life of a forest, when you come to take the importance of it. It is suggested that the people should have it for park and recreation grounds; that it should be for the use of the people; but that is not the real purpose and the underlying thought in the preservation of these forests. The first and primary thing is the holding of the water, the securing of the forest cover, the prevention of anything that would destroy the supply of pure and wholesome water for the people of the State, and that would enable us to control the flow of these streams and these rivers which make up the water and the health and wealth of our State. Now, then, if you take up these sections, I am not going to dwell upon the importance of them, because it has been so often and so splendidly summarized, beyond asking you for a moment to turn with me to one of the greatest authorities in this country who is now in the United States Department of Agriculture, in the Forest Preservation Department, in Washington, and this is what he says on this subject, on the purpose of these forests, and we must always keep this in mind. Of course, no one objects that, if consistent with the maintenance of that policy; if we could secure the primary purposes for which we are building up this great Forest Preserve, if in addition to that we could do all these

other things with safety, every man, of course, including myself, would be pleased to see that done. The first thing we have got to do is to conserve and preserve these forests. We can permit no policy to be inaugurated that will open the door which will enable any one to do what has been done in the past, to wrest from the people of this State the lands which belong to all the people, because of one industry, lumber or otherwise, and to enable these lumbering men to do what has been done in the past and which, if continued, would result in the forest, or these regions, being entirely denuded.

Mr. Winslow — May I ask the question, whether under your construction of this section licenses to persons desiring to have camp sites might be granted by the commission?

Mr. M. J. O'Brien — Surely, for temporary camp sites. They cannot be permanent.

Mr. Winslow — Mr. Chairman, do I not understand — May I ask the gentleman from New York whether or not the provisions of section 6 would not be in conflict with the construction placed on the section under discussion, namely, that a temporary license might be granted? Does not the latter section, which we have not yet come to, forbid the granting of licenses, except to continuous occupants?

Mr. M. J. O'Brien — Well, I would say for the information of the gentleman, in regard to the last section to which he has referred, that we had a situation that confronted the Committee and it was that up around Raquette Lake a little township had grown up. There were people who had raised their families and been there for a great many years, and we had to make an exception in favor of those people, and so we said, at the request of the Commissioner of Conservation, who appeared before the Committee and said that it would be a good thing to do, not to drive these people out of their homes, and not to destroy this little hamlet which has grown up there, and to permit this commission, when appointed, to grant revocable licenses for these people to continue there as long as the policy of the State did not require them to move, that was the reason why, in that case, there was that exception made.

Mr. Winslow — Do I understand that your construction of the later section which we have not yet come to, namely, the granting of licenses to continuous residents or occupants — do you understand that that would be exclusive?

Mr. M. J. O'Brien — That is an exceptional provision, put in there for the purpose I have suggested. Now, Mr. Chairman, I was referring to the statement made by Mr. Graves, the head of the Department of Forestry of the United States government,

who, in speaking about forests says: "But the public interest in the Adirondack forest is not by any means confined to the economic and industrial problems connected with timber production. The production of water under stable and uniform conditions of flow, and the protection of water sources from destruction and of their valleys from floods, are all equally important. The forest cover on mountainous areas is the very factor which protects and in a large measure even creates the sources of water which are indispensable to the physical well-being and industrial life of the nation. The third great service which forests render to the State or country is to the recreation and health of the people and their esthetic environment. The greater the urban population in any section, the more vital does this service become. Who can calculate what the forests of the United States have meant to the virility and health of her people and to the preservation, in the midst of complex social conditions, of some of the pristine vigor and simplicity of pioneer conditions? Wholly aside from the question of moral and esthetic environment, as a means to national health and greater national efficiency, this service has an economic value beyond calculation." Therefore, gentlemen, without taking up unnecessary time with dwelling on the importance of the preservation and conservation of our natural resources, particularly in regard to our forests, let me say that the Committee was confronted with two propositions, with two basic questions, and that is, what was to be the policy in the future in regard to the handling of the forest preserves, and, second, having decided that question, how should the policy be carried out? It was decided that we would not depart very much from the policy which was laid down in the present Constitution; and that decision was based upon the experience on this whole subject which we have had in dealing with the question. The whole of it is in a formative state. It is suggested that you can go in there and cut mature timber without any injury, and it was maintained by some of the gentlemen on the Committee, honestly, that you could do it with benefit to the forest. Well, of course, that is a question. If you ever have a scientific survey, if you have an administration which will enable those who have it in charge to determine the character of the different portions of this great property, consisting as it does of 1,800,000 acres of land — before anything should be done, before any of these trees should be cut, before any policy of a makeshift character, such as on the theory that you can go in and cut hard wood or soft wood in any particular portion of this forest, a survey should be made. Every one who was before the Committee and who expressed himself on the subject was unanimous in the view, as I gathered from those that I listened to and from what I read

on the subject — they were all insistent and unanimous on the subject that before any trees should be taken from that forest, before any axe could be allowed to again destroy this wealth, there should be an intelligent survey made of the lands which the State owns; that there should be a division of the lands into different characters of wood and as to the different purposes for which they might be applied; and then, with those facts in the possession of a commission such as it is proposed here to create, it would be easy for the people, and it ought to be left to the people alone on a reference to them, to change this policy.

It would be a great mistake for the members of this Convention, after what has been done to bring about again the hope that we are to have one of the greatest forest preserves in this nation — because, let me say to you that, in addition to other things, it was shown before the Committee that in our State we have the best soil for tree growing of any State in this Union. With that in our possession, should not the policy which we should follow be the one which was enacted in the Constitution of '94, namely, the conservation of the forests? No harm is being done, and this is important for you gentlemen also to know that this policy has been carried on in the past without any serious amount of expense. It is suggested that you might, by cutting trees here and there, derive a revenue for the State, and it was said by some one that that revenue might be as high as \$1,000,000 a year. I say that if we attempt to raise \$1,000,000 from these forests, we would be paying in the future with interest at a rate which would forever represent a loss to this Commonwealth which would be incalculable. Never allow the forests to be cut down on the theory that it is an economic problem. It is a problem of health, it is a problem of stream-flow, it is a problem of the protection of the health and of the game and of the stream and also of the welfare of the people of this State. When you come to expense, what does it all mean? In the last year — while I am on that subject, just let me tell you how much it costs so that you will not be carried away with the notion that the State is required to make any extraordinary exertion in order to carry on the administration of this great possession. I will read from the Fourth Annual Report of the Conservation Commission, but first I want to say that since the changes in the administration of the forest preserves, at least for the last seven or eight years, we have reason to congratulate ourselves for the differences of opinion that would naturally arise between different administrations, which came in to conduct it; yet, with all, it was that singleness of purpose, with differences of views and yet on the whole with a desire to protect the interests of the State, that has brought about the result we have accomplished. Now the

report shows that the Conservation Commission for the past fiscal year has turned into the treasury \$381,000. The commercial value of the product of the State Fish Hatcheries and Game Farm is \$215,000, so that the total turned into the treasury, directly and indirectly, was \$506,000, and the total departmental expenditures were \$640,000. Therefore you will see that conservation pays its way. And then remember what has happened, by the expenditure of that meagre sum of money. Why, the fish hatcheries of this State, if you care to go into the statistics, have done wonderful things in continuing the protection of our fish. And then take the growing of young trees; I shall not give you the figures, but millions of young trees have been added not only to public but to private land. In addition to that, institutions that are engaged in horticulture have received them with a profit to the State, and with great advantage, from the fact that they were set out by private owners. Of course, private ownership is a valuable thing, and nothing should be done to discourage that, but private ownership does not mean anything to the welfare of this State as compared with the State policy in conserving these great resources. It is within the experience of every man here who has gone up in that North country, and who has been through its forest preserves, who has seen where the lumberman came with the axe and where hamlets sprung up, that when the forests were denuded the hamlets disappeared and there was nothing left but sawdust to show where once had been a small and apparently contented people. It is a migratory business and it has no relation to the upbuilding of the State. It is transitory and has no force in an argument when you refer to something that ought to be considered in connection with the general policy of a State like New York. Now, gentlemen, with regard to this question of administration, the point was, therefore, that having this important matter to consider, having reached a policy which led a majority of the Committee to think that it should be followed, and which is embodied in the sections of this proposal from the Committee, the question was, how should it be administered. I have already said that in the past there were many people in the State who were not familiar with the importance and the value of these forest preserves. Now, in the last ten years particularly, all over the State there has been aroused a feeling of interest in this subject, and we have in almost every section men who have written to or appeared before the Committee expressing the interest that they take in this important subject. So the Committee has felt with this, like with many of our other great projects of State policy — because it has an esthetic side, it has a side that appeals to one apart from mere governmental routine, it has a side that appeals because it is so intimately connected not

only with the growth and development of our State, but with the health and with the recreation of our people. So you have all over this State to-day and during the last ten years a number of gentlemen who would willingly devote their time and services to carrying out a policy such as is outlined in this report and the Committee therefore deemed it wise to do as we have done with reference to many other similar institutions. Let me say to you gentlemen that this was modeled after the Board of Regents, with which you are all familiar. The Board of Regents is just like the board suggested here, except that there are twelve members. In this case we made the commission consist of nine members. The Board of Regents selects the head of the Education Department and I am sure that I voice the feeling at least of every one with whom I have spoken on the matter that in the selection which they made of Dr. Finley, resulting in the splendid work which he has done for education since his appointment by the Regents, they are carrying out splendidly the work which is entrusted to them. Also, let me call your attention again to the Palisades Park Commission. There is a Commission which has also done splendid work. That is a commission organized and planned on these same lines. That commission has succeeded, in connection with the State park along the Palisades, not only in obtaining appropriations for the purpose of making that splendid park a recreation ground for all the people in that section of the State, but they have excited an interest, they have given it an importance which has attracted the attention of many men who are fortunate in the possession of this world's goods so that there have been private donations to the State park of at least \$5,000,000. And I say here that under the same sort of management, with the same interest excited when once the importance of this subject is brought home, you will have the same generous response from the people in all sections of the State who, having enough for themselves and to spare, would give to the perpetuation of these great forest preserves some of their money for a public good. Take institutions like the Public Library in the city of New York, in which I have been interested for many years. There we have a self-perpetuating board. I want to say that not even the British Museum, which is the great library of the world, is superior to the great Public Library of New York city, and that library has been built up because the trustees have been left alone. We have been allowed to manage that free from any political or other influences. It has been the pride and the joy of every man who has anything to do with the development and the building of that great institution. We have been rewarded by the pleasure we have found in seeing that grow up and become, not only to our city but to the people of this State, a monument to the industry of

those who have been instrumental in bringing it together. I need not mention to you gentlemen here who, all of you, in one way or another, are taking part in great philanthropic and charitable movements, that these questions, when you bring in the element of the State's welfare or the advantage to the people or something that is going to be of benefit to a great number — I need not say to you gentlemen, all of whom are in one way or another concerned in these charitable and educational institutions, but you have the example of your own board, the men, who, without compensation, without the hope of reward except that which comes from the consciousness of doing good, who give of their time unsparingly and of their means to protect and upbuild the particular work in which they are engaged.

Now, as to this question of administration, there was a strong, perhaps the strongest contention in our Committee as to this question of administration. On one side it was suggested and with much force that one commissioner should have this great work to do; that you should center responsibility in a single head, and he should be a salaried man, paid a large sum of money, some distinguished man familiar with scientific forestry. Of course it follows that any commission of nine would select just such a man to help them in the management because the fixing of policies and the general administration of the affairs of the commission, the commissioners themselves would determine that, and it is important on a question of this kind that these great broad subjects of general policy that now with respect to a commission — with regard to subjects which are still experimental, I say that the whole question of preserving and the readjustment of the various lands, the determination of whether we shall, outside the park areas, with a view of centering all our possessions within the parks of the Adirondacks and the Catskills, all of these great questions of public policy of the commission's work will be up before it and ought to be determined by a large board of men of affairs, men who are interested in the subject for the subject's sake. Then, when it comes to the details, of course you have got to have a scientific forester, some man who will be the right arm of that commission, who will carry out the details of the work. It seemed to us that was an exceptional work and that was the point of distinction between the minority and the majority. It seemed to be an exceptional work. If we can dignify this great and important subject, if we can enlist the interest of the people of the State as it should be enlisted, to what it means, the preservation and the increase and further growth of these great forests, if we can bring to the consideration of these possessions which mean so much to the State, all men, all of the people at large, all of the people of our

State, who own these splendid possessions, if we can arouse that interest, we have succeeded then in placing around it the best safeguard that can be placed in order to protect these great possessions. If we have the people properly interested, as they would become by a board whose duty it was, drawn from each section of the State, to bring this subject to the attention of the people of that section, to the end that all of us might unitedly work for what nature seems to have destined to us to secure, the possession of the finest forest preserve of any State in the nation.

The Chairman — The question before the House is on the motion of Mr. Quigg to strike from page 2, lines 10 to 12, the words "except migratory fish of the sea, within the limits of the marine district." On that point the Chair recognizes the gentleman from Columbia, Mr. Quigg.

Mr. Quigg — Mr. Chairman, it is evident that, although we are reading this section by section, there is to be a general debate, and I do not wish to interrupt that debate or to interrupt its continuity of thought, and I wish, therefore, to withdraw my amendment, for the present, or until that general debate has been concluded.

The Chairman — The amendment is withdrawn.

Mr. E. N. Smith — Mr. Chairman, it has seemed to me, in the work of the Committee on Conservation of Natural Resources, that we were dealing with a subject which was of more importance to the welfare of the people of the State than perhaps any subject before any other Committee in this Convention. We were dealing in a new field, a field in which up to this time practically nothing had been done. What was to be the scope of the Committee's activity? Was it to be confined to the provisions of Section 7 of Article VII, to the effect that the lands of the State now owned or hereafter acquired, constituting the Forest Preserve, as now fixed by law, shall forever be kept as wild forest land? If so, then the work of the Committee was limited to a very narrow, circumscribed area. Was it to cover the natural resources owned by the State in distinction to the natural resources of the whole State? If so, then its work was limited to a very small area. But, as I take it, the work of the Committee was not confined to any circumscribed limits, but involved the natural resources of the whole State, whether owned by the State or owned by the citizens thereof. And it was in the spirit of duty to the future, of looking ahead, that this Committee has acted and brought in this report, with the general and almost all the features of which I am in hearty accord. What are these natural resources in the State of New York with which we are dealing? In the State there are 30,498,560 acres of land. Of these lands 22,030,365 acres in 1910 were farm lands,

of which 14,844,039 were improved farm lands. The value of our farm property, including lands, buildings, machinery and live stock was \$1,451,481,495, of which the land value is \$707,747,828. This is the great natural resource of the State. The next resource of the State is its water, whether related to municipal water supply, whether related to navigation, or whether related to manufactures and power. The most interesting and absorbing subject with reference to water was its relation, of course, to our industrial life. This State of New York produced in 1910 manufactured articles to the extent of \$3,369,490,000, an amount greater by \$300,000,000 than the gross earnings of all the railroads of the United States. In the production of this there were required 2,000,000 horse-power, of which 800,000 horse-power were produced by water. This brings me to the consideration of the water power resources of the State. It is estimated that within this State, excluding the power capable of development on the Niagara and on the St. Lawrence rivers, there are capable of development 1,500,000 horse-power of water, of which about one-half are now under development. In addition to this, there are some 60,000 or 70,000 horse-power capable of development, it is said, in time, out of the waters of the canal. These, then, were our resources. The value of this water power amounts, according to a conservative estimate, to \$187,500,000 in its developed and undeveloped state. The value of our State-owned forests amounts to about \$20,000,000, taking the State-owned lands, so that we have as our natural resources subject to conservation: Agricultural lands, \$707,747,000; water supply, \$187,500,000; forests, \$20,000,000. It is therefore evident that if the question of State-owned forests were only concerned, that that is of minor importance, but the relation of the forests to water, the relation of the forest to agriculture, is the fundamental, underlying principle which we have to consider, and the subject of forestry is so intimately related to these two that they cannot be separated. Let me call your attention to some very startling figures. In 1910 there were under cultivation 14,844,000 acres of land. In 1900, ten years before, there were under cultivation 15,599,986 acres of land. In other words, in this State in the ten years from 1900 to 1910, we had lost in acreage 755,947 of cultivated land; or at the rate of 75,000 acres a year, and the question arises, why is it? Is it because land values are decreasing? Not at all. During the same period agricultural lands increased in value from \$551,000,000 to \$707,000,000. Now I have made considerable inquiry as to this subject, and why is it that these acres are being lost to cultivation? It is because, gentlemen, the waters of the State, the ground water levels of the State,

have been lowered to such an extent that the productivity of the soil has been seriously impaired. I don't want to go into this phase of the question too deeply, but I must call your attention to the report of the United States authorities upon this subject, and of the relation of water levels to agriculture. Mr. Magee, in Bulletin No. 92, of the Bureau of Soils, issued in 1913, says: "The habitability of any continent depends upon its water supply. No water, no plants. No plants, no people." I am not going to take the time of the Convention to read this report, but the general effect of it is that as experiment throughout the United States has shown, during the last 100 years, the ground water levels have lowered about nine feet, and to-day our soil is in this condition, that it is entirely dependent, practically, upon rainfall for its productivity, for the reason that the ground water level is lowered so much that the point, the point beyond which capillary attraction will not work has been reached, so that we are suffering from conditions of drought, and that is the reason why it is that we are losing to-day 75,000 acres of agricultural land every year in this State and this is attributable to the fact that our forests have been removed, that the relationship as stated by Mr. Magee between what should be cleared land and forest land has been disturbed, so that the waters run off too rapidly to the sea, and do not seep into the soil, and do not furnish that reservoir for fertilization which nature had provided. On the other hand, it is familiar to every one of us that all over this State the process of the drying up of streams is going on. While we have large amounts of water power in this State developed on our streams, still that water power to-day is of use for only about seven months of the year, and it is true that in 1825 there were more places of power development in this State than there are to-day. It is familiar to most all of you that there are all over this State streams on which years ago there were dams, running water wheels, streams which furnished water practically continuously and now they are absolutely dry except at the spring freshets.

In fact, it has been brought to my attention upon very creditable authority that years ago, on the Allegany river, boats ran from Pittsburgh to Olean in this State, and now no such thing exists because the stream is filled up, in the first place by silt and eroded soil and, in the second place, there are too many freshets in the spring and no water in the summer and fall. That is the general condition and there is one general cause, and that is that we have been cutting off our timber regardless of its effect upon the future welfare of the people of the State. Is it any wonder then, gentlemen, that the agricultural interests in this State came forward and demanded of the Committee that they, the agricultural interests,

should be placed in full charge of the subject of conservation, realizing what has been the result of past experience; realizing how no real interest had been taken in the subject, they feel that theirs is the greatest interest, and that in the past, from that standpoint, they have received little or no consideration. This brings me to the subject of administration and the character which that administration should take. It is apparent that these reforms which have got to be made, the conservation of our natural resources, the building up of forests, the construction of reservoirs to regulate the flow of streams, are not matters of a day. They are matters of a generation. The very character of the subject requires that there should be continuity of purpose, not subject to change incident to changing administrations, that it should be in the hands of a body of men who represent the whole State and every section of it; who were men above any reproach; above any suspicion; that there should be no question of partisan politics in a matter so vitally affecting the welfare of the State. The experience of the State up to the present time has been largely limited to the narrow view of the subject, to the consideration of a circumscribed area of land, known as the Catskill and Adirondack park, as a park, as though it were a preserve for camping or to be used as a resort or playground for the people. But that is the narrow view and not the broad view of the natural resources of this State. At the same time it must be admitted that the broad view does not in anywise interfere with and impinge upon the views of those who hold that the Adirondacks should be preserved as a park. Now, what have we done in this State? I want to say and give all credit to one man who is a delegate in this Convention for the interest which he has aroused in the subject of forestry in this State, because I believe it has been largely due to Mr. Whipple's efforts throughout the State who when nobody had any interest in the subject went about and lectured from one end of the State to the other, that we are at this stage of interest at which we have arrived. But, what have we done? In the last eight years, and that is about the only period that we have had any reforestation in this State, we have reforested 3,400 acres of State land. It is admitted by the Conservation Department that there are 120,000 acres of State land that should be reforested now, and I believe that the true figure is nearer 400,000 acres.

What have we accomplished then in the line of reforestation in the present system? About 400 acres a year; less than 500 acres of land reforested in a year. Figure out how many years would it take to reforest the land which we now admit must be reforested under the policy which we have pursued in this State, and during the last five years we have acquired no land, whatsoever, or practically none, to add to the forest preserve. And yet, during the

twenty-three years ending in 1913, I think it was, I am not entirely accurate as to the date — but during the twenty-three years there were burned over within the Catskill and Adirondack park preserves 1,186,000 acres of land. Now, that does not mean that those were new acres of land, but that was the volume of burning, and my recollection is that in 1906 112,000 acres of State lands were burned. So you see, gentlemen, up to date, we have reached no conception of this subject from the standpoint of the State itself so as to preserve any continuity of policy or of purpose. It was the idea of the Committee that every section of this State was interested in the subject of conservation and should be represented upon the board which was to govern and deal with this great subject; consequently, the proposal that one member should be selected from every district. Another thing, while we are talking about extending the forest cover in the parks. The purpose of forestry is not limited to that area, although by a wonderful provision of nature it is true that 80 per cent. of the streams in the State which are capable of developing water power find their rise within the area known as the Adirondack preserves. But so far as agriculture is concerned, it is of just as much interest to have forestry out in the western and southern parts of the State as it is in this area up here; and I believe that in time every acre of land in this State which is nonarable and is capable of forest growth should be reforested either by the State, by counties, by cities or by individuals. It must be realized that you cannot get individual effort on this subject. The individual does not see the advantage, because it is a long way off and it takes forty to fifty or seventy-five years to grow a forest; and then, again, we owe a duty on this subject in relation to our future timber supply, which I shall not go into now. Much was said in the Committee on the subject of lumbering at the present time in the Adirondack preserve, and I must confess that I came to the Committee with the view, due to representations contained in reports of the Conservation Commission, that there was a large wastage going on in the forest from the maturing of timber and that a large revenue could be obtained to the State for the purpose of purchasing added land, and for the purpose of continuing the policy of reforestation. But an examination showed that there was no inventory of State lands capable of forestry, of scientific forestry, that we had no estimate on that subject, and I did not feel, after listening to all the representations made upon the subject, that there was anything whatever before us which would justify us to-day taking up that question, and that there was no immediate necessity that the subject be considered. The Committee did not meet one of my views for reasons well stated, perhaps. It was my feeling that it was of just

as much importance to preserve the forest cover on privately owned lands as it was on the lands owned by the State. I can see no distinction. It was my feeling that it was within the power of the State to regulate the cutting on private lands under the police power. I felt that very deeply because of the fact that cutting had been going on to an extent and in a manner which was destructive to the forest cover. But it was pointed out that the owners of large areas of land had come to a realization of this situation and were already cutting their timber in regard to the future development of the forest, and it was also pointed out that it would be unfair and unjust to take that position in reference to private-owned lands, because it amounted practically to confiscation of property, and the Committee, therefore, brought in the suggestion that the State, the Legislature, should be mandated to continue the policy of purchasing forest lands, of adding to the forest lands, to the end that we might accomplish by this method the same result that would be accomplished by a regulation of the cutting on private lands. Gentlemen, I have as briefly as I may tried to open up the scope of this subject. I feel deeply interested in it. I feel that this Committee has deliberated carefully and considerately on this subject, and has brought in a report which meets the just and reasonable aspirations of the people of this State, and that if the policies outlined by this Committee are followed by the Convention, that we shall have reason to believe when we look back twenty years hence that we have inaugurated a policy which has redounded to the welfare and the benefit of the people of the Empire State.

Mr. Weed — I beg to direct your attention to lines 8 and 9 on page 2, and the phrase as to the power that is given to them of "the control, conservation, prevention of pollution and regulation of the waters of the State." As you know, there are proposals before the Committees, two of them, in regard to mill sites, and also in regard to limiting the power of the disposition of the water powers of the State to some definite term. I would like to ask whether the control over both those matters is given to this commission by this act?

Mr. E. N. Smith — My judgment about that subject is this: That it is the intention that this commission would have the control of the waters of the State and the regulation of the flow of the streams of the State in a general way; that is, in a supervisory way; that if there were any engineering problems connected with the subject, of course, those would have to be taken care of by the department of the State government which has charge of State engineering. Just as with the subject of agriculture, and I do not wish to go into that very fully; that while

the Agricultural Department would have charge of the commercial feature of agriculture, the conservation, in so far as it relates to waters, would be in this Department. So my judgment about the subject is that this is more a supervisory relation than one involving the actual development of water power by this commission. I do not think it is within the purview of the scope of this provision that this body should have charge of the control of waters, except in a supervisory sort of way. Of course, if water powers are owned by the State, and there are some water powers owned by the State, it might be possible that these water powers would be under the control of this commission, but I think the thought is rather that they should have control of the streams of the State, so far as the regulation of the flow is concerned, and that is the main purpose involved.

Mr. Bockes — With regard to those same lines just mentioned and which you have been discussing. In view of the fact that the words "prevention of pollution" are used; what do you say as to the effect upon the activities of the Health Department? At the present the inspectors of the Health Department upon complaint investigate creameries to see whether they are polluting streams. Aren't we, by express language, preventing the Health Department from continuing this operation?

Mr. E. N. Smith — In reply to Mr. Bockes I would say that I have not in mind — that I was not concerned in the drafting of this particular phraseology; that I imagine that the idea was to place in this body the general supervision over the waters of the State, and that if waters were polluted that came naturally within their concern. It might in some respects, perhaps, take away some of the power from the Health Department — in some respects, but I do not see how it could do it in a general way. I assume that this confers the power to prevent the pollution of streams under legislative authority.

The Chairman — The question is upon the motion to approve of the first section?

Mr. Whipple — Mr. Chairman, I offer an amendment.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Whipple, strike out all of Section 1 down to and including the word "heard" in the third line, page 2, and insert the following: "Section 1. The Department of Conservation shall consist of a single commissioner appointed by the Governor and subject to removal by him on charges after an opportunity to be heard. The commissioner's term of office shall be six years. His compensation shall be fixed by law. He shall appoint and may at pleasure remove a deputy commissioner and fix his salary. He may also appoint all necessary subordinates,

all of whom, except his secretary, confidential agents and laborers, shall be selected from eligible lists made up as the result of competitive examinations conducted by the Civil Service Commission." Strike out from Section 1 all of said section, commencing with the word "The" after the period in line 15, page 2. After the word "same" in line 5, page 3, strike out the period and insert the following —

Mr. Blauvelt — Mr. Chairman, does not that have to do with Section 2? The section which the Secretary is now reading has to do with Section 2. I make the point of order, Mr. Chairman, that we are now considering Section 1.

The Chairman — The point of order is sustained.

Mr. Blauvelt — I would like to ask Mr. Smith — I have a Proposed Amendment to this section which is very short, and has to do with the words "subject to the veto of the Governor" on page 2, line 11.

The Chairman — That should be line 12. The amendment has been reprinted. You probably have Print No. 763; this is Print No. 785.

Mr. Blauvelt — I think it would be better to use the word "approval" rather than the word "veto." The word "approval" is self-executory, but "veto" would unless it is the purpose of this Proposed Amendment to permit the Governor at some future date after the rules and regulations of the Commission or this Board have been in operation to nullify or veto the rule or regulation — it would not be self-executory unless a time limit was fixed. Now, I think the word "approval" would be much better than the word "veto."

Mr. E. N. Smith — As you know, Senator, I was not on the subcommittee but I can see no objection.

Mr. Marshall — There is no objection.

Mr. Blauvelt — If there is no objection, I will offer the amendment at this time.

Mr. Clinton — The amendment which has just been presented by Senator Blauvelt will probably meet with universal approval, but before considering the amendment presented by Mr. Austin, which will take considerable time for discussion, I would suggest, by unanimous consent, that we take a vote at this time upon Senator Blauvelt's amendment, and dispose of it.

The Chairman — If there is no objection, a vote will be taken upon the motion by Mr. Blauvelt to substitute the word "approval" for the word "veto," page 2, line 12. All those in favor of that motion will signify by saying Aye, contrary-minded, if any, No. The motion is carried.

Mr. Ostrander — I wish to offer an amendment to Section 1, and wish to inquire of the Chair whether I shall do it now or wait until the conclusion of Mr. Austin's address.

The Chairman — The amendments will have to be disposed of one at a time, and while the Chair believes that Mr. Austin would be willing to permit an amendment being offered at this time, the Chair would suggest that the other amendments be held until this amendment is disposed of.

Mr. Austin — Mr. Chairman, both the delegate from Saratoga and the delegate from Erie are very much mistaken. The delegate from Erie is mistaken when he says that he thinks any proposals which I have to make will take me long to discuss, and the gentleman from Saratoga is very much mistaken when he says that I am going to make an address. I am so thoroughly in accord with every part of this report and of this Committee proposal, except the first section, that it is with great reluctance that I am forced by my convictions to say a word against that section as it now stands. I have for several days, since the Committee decided what it would report, since I filed my short minority report — I have honestly struggled with myself to see if I could not convince myself that I could agree with that first section and say that I was for the Committee report as a whole, but I cannot. I do not propose to take long to discuss it. I only propose to point out the objections which I have to it, and to make sure that no member of this Convention votes for this proposal without being certain as to exactly what he is voting for. Now, we propose by this section to depart, it seems to me, from the three principles which everybody supposes actuate the majority of the members of this Convention. It is assumed, I believe, and I think the majority of the members of this Convention believe, that there should be more centralization of power. We assume that there should be a more definite fixing of responsibility, and in the two great amendments which are pending before this body, two of the most important things which will come before it for consideration, the home rule proposition and the budget proposition, certainly the Committee, and I believe the Convention, have agreed that there should be a reserve power in the Legislature. Now, those three things are entirely violated by this Proposed Amendment — those three principles. It is said that this amendment will remove the department from politics, and that that is its purpose. If I thought that that glorious result would be accomplished, I would be for it, but I cannot conceive of how this Department will be removed from politics by making it a nine-headed, unpaid commission. It seems to me that such an idea is pure buncombe, and I do not question for a moment the

good faith of the great majority of this Committee which advanced the proposal. They are earnest and they believe that it will accomplish that result, but I honestly and earnestly believe that they are mistaken. These nine commissioners, if this proposal is to be carried out, will be appointed next year by the Governor. Is he going to appoint four and a half Republicans and four and a half Democrats, and thus remove it from politics? If he is as good a Republican as I hope he is, he will not appoint more than two Democrats on the Commission, and it will be political in its character for the next five or seven years to come. There isn't any doubt about that. It is not true that there is no politics in a crowd; as I have said before, there is more politics in a crowd than there is in an individual, and there will be politics in this body just as sure as the world. The only way we can get away from having it of a political complexion, it seems to me, is by putting on the commission one member of each of the nine parties that appeared upon the ballot last fall, one Republican, one Democrat, one Progressive, one Independent Leaguer, one Prohibitionist, one Sulzer Party — whatever that is — one United Labor, one Socialist, and one Socialist Labor. Now, that will remove it from politics, and it is the only way that I can conceive of that it will be so removed. Now, gentlemen, I do not want to dwell upon that subject. I think the principle is entirely wrong. We have no such organization in any other department of the State, except the Regents, to which reference has been made. Now, I certainly do not decry the work of the Regents, but the Regents do not run the Education Department. They have no such powers as are proposed to be given by this amendment, and I venture to say, if I am correctly informed by the eminent educators with whom I have talked, that all persons who are experts upon the subject of education agree that if they were to start the educational system of this State again they would never start it with the Board of Regents. Now there is one more important — almost, to my mind, still more important — objection to this section than the nine-headed proposition, and that is the legislative power which it is proposed to give to this body — a third Legislature to deal, with exclusive power, with the subject of fish and game laws. They are to make the laws. Now I have been Commissioner for a short time; I have followed this subject closely for a great many years, and I know full well that there is altogether too much tinkering with the Fish and Game Laws by the Legislature. I appreciate that just as much as anybody. But there will be tinkering with the Fish and Game Laws by this Commission, I believe, and if there is anything else which will throw this nine-headed commission into

politics, it is the fact that they have power to make Fish and Game Laws. That will throw them into politics, if nothing else will.

Mr. Marshall — Is it not a fact that in past years there have been enacted by the Legislature from 80 to 100 laws amending the Fish and Game Laws, with regard to trivial matters, as to whether or not suckers could be caught in Canaseraga creek and other matters of that same character?

Mr. Austin — Very true.

Mr. Marshall — Is it not a fact that ordinarily in the Legislature the wishes of the member who introduces such a measure are enacted into the statute without any consideration on the part of the Legislature or of anybody else except the man who introduces that measure?

Mr. Austin — No, I do not think that is true.

Mr. Marshall — Well, it is usually the case, is it not?

Mr. Austin — There is a great deal in what you say, but I do not think it is entirely true.

Mr. Marshall — Is it not, after all, a matter purely of administration of a subject which can better be dealt with by a small body, acting as such a commission would, rather than by the Legislature of the State of New York?

Mr. Austin — As to those things which affect purely a locality, which affect local conditions only, then it becomes a question of administration; but, to my mind, a fish and game law, a regulation which affects the State as a whole, as many of these laws do, then loses its administrative character and becomes one which should be determined, in the final analysis, at least, by the Legislature.

Mr. Blauvelt — In 1911, or 1912, the Legislature passed a law, which the Governor signed, for the nonsale of game, with which you are, no doubt, familiar. Assuming that that had never been passed, under the provisions of this bill, would the Board have the power to make such a rule or regulation preventing the sale of game?

Mr. Austin — They certainly would, in my opinion; exclusive power to make rules and regulations with reference to the taking, possession, sale and transportation of fish and game.

Mr. Blauvelt — In that respect, the Board might have power of determining a policy of the State.

Mr. Austin — Absolutely. Now, there was passed not long ago, and is in effect now, a provision of law which was very salutary, to my mind, because it gave certain discretion to the Conservation Commission with reference to these regulations respecting the taking, possession and sale of fish and game. So far as the protective

features were concerned, it provided that the Commission might, by order, increase the protection provided by law, but it could not diminish it. Many rules have been made with a very salutary effect under that provision. I think that in ninety-nine cases out of a hundred probably the Department of Conservation is much more competent, in the first instance, to make a fish and game law or regulation, as you may please to call it, but I do not believe in taking from the Legislature absolutely all reserve power over those matters.

Mr. Brackett — As cognate to the question asked by the gentleman from New York, Mr. Marshall, I would like to ask the speaker if in his experience as Commissioner he ever found the Legislature passing any law, whether it be for the relief of suckers or what not, without consultation with the administrator of the Department and without practically taking his view.

Mr. Austin — Never; occasionally without taking their views, but never without consultation.

Mr. Clinton — Mr. Chairman, will the delegate yield?

Mr. Austin — I do not yield. In an amendment which I propose to offer at the proper time — I do not offer it now because there is one under consideration — I have suggested that this commission, or the single-headed commission which I propose — if you retain the nine-headed commission, I would like to use it in that proposal — following the words so far as they go, in the Committee proposal, that it shall have the power to make regulations with respect to the “taking, possession, sale and transportation thereof, which shall have the force and effect of law when filed in the office of the Secretary of State and published in such manner as the Legislature may provide” — because they must be published in some way — “until and unless after such making, filing and publication, the Legislature shall by law prescribe other and different regulations.” Now that vests in the Commission the power to make these regulations in the first instance, but it does not take away from the Legislature reserve power over the matter. If that is put into effect, I do not believe that you will find the Legislature interfering with rules and regulations of the Commission established after investigation, unless there is a good and sufficient reason for such interference. But, so far as I am concerned, I am opposed to giving to this body, whether it be a nine-, three-, or single-headed commission, legislative powers such as have never been given to any other body in the history of this State.

Mr. Clinton — I simply desire to ask the speaker whether, in case the initiative in the making of regulations as expressed here remain in the Commission, whatever its form, subject to the paramount power of the Legislature — whether he would still be of

the opinion that that power of initiation would make a board of nine, or any other number, instead of a single-headed commission, appointed by the Governor, necessarily a factor in politics? We digressed, Mr. Austin, from the main argument, and I want to get back to it.

Mr. Austin — I think that would remove a great deal of politics from the nine-headed commission. There is one thing more, Mr. Chairman, if I may call attention to it. I personally differ from the idea of the Committee that this first section should contain a civil service provision. The form in which the civil service provision is now in the bill is much less objectionable, to my mind, than it was before, but I am wondering whether the effect of this provision is to require that the deputy himself, the right hand of the superintendent, shall be under civil service regulations. I would be very glad if some one, who is much more familiar than myself with civil service matters, would tell me whether, if this provision went in, the Civil Service Commission has the power to classify as exempt the position of deputy. If it has that power, then I haven't any objection to this section, because I well understand the purpose for which it was put in.

Mr. Rhees — It is the understanding of the Committee on Civil Service that this language is that which is proposed by the Civil Service Commission itself, and that the right to classify in the noncompetitive class deputies and similar appointees rests with the Civil Service Commission.

Mr. Austin — Even if this is adopted?

Mr. Rhees — Even with this provision.

Mr. Austin — Then I have no objection.

The Chairman — The Chair will call the attention of the gentleman from Greene to the fact that the language of the Proposed Amendment by Mr. Whipple follows the former language and not the present language.

Mr. Whipple — I have in mind that the language in that amendment does not accord with the language in the proposition by the Committee, and the reason is that it was constructed prior to the last meeting of the Committee yesterday when we changed the wording of that, but it will answer to present to the Convention the one pertinent thought as to what this commission should be made up of, and if the Convention adopts that principle, I have no objection to the language that is in the other proposition. I had not considered that important enough to consider this morning.

The Chairman — The question is upon the motion of the gentleman from Cattaraugus, Mr. Whipple.

Mr. Whipple — I assumed that some one else would like to say something about this, and probably will after I may have said

something. I am assuming that my friend, Mr. Marshall, will be glad to say something, and I am assuming that he will not agree with me in what he will say, although he wanted this. He has changed his mind and I have not changed my mind, and that is the difference. Now I agree with Mr. E. N. Smith that this is an important matter. I do not know that it is necessary to waste a great deal of time in lectures or oratory upon it. There are a few plain business propositions, that is, such objections as I have to this board; the body of the bill is all right, otherwise than as specified in the minority report which I filed. The body of the report otherwise than as specified in the minority report which I have filed, I approve of. The scope of the authority of the commission I approve of. First, I trust that the members of this Convention now in Committee of the Whole will bear in mind that there must have been many different opinions in the Committee on Conservation, from the fact that as I remember it not more than five out of the seventeen men fully agreed on every proposition in that report. Barring myself — well there may have been one or two more — barring myself I think the Committee was made up of very intelligent and earnest men. I am not speaking of myself, neither am I declaring that I am not an earnest man, but I wish not to make it personal. The other sixteen were as good as you have and every one of the seventeen are deeply interested as all of you are in this subject.

The only question was what are we to do, and what can we do? Now I think I differed with some of the members of that Committee very largely because I have had an opportunity to come in direct contact with the physical matters in relation to this subject. I believe that is the reason. They may be right, I may be right. All that any of us want in this Convention on any subject, if I understand what we are here for, is to do the best thing on each given subject. We have got no pride of opinion. We don't care to assert our individual ideas except as in conscience we believe they are right, and if we are beaten on them, why, like men, we say that the majority is probably right about it and we surrender our own opinions. Now I am opposed to a nine-headed commission in this or any other department and I am opposed because that kind of commission has never worked well and I am opposed to it on the principle of the suggestions by my friends on the Committee because it puts it into politics. If I were Governor of this State I would prefer to appoint nine men, one in each judicial district, as against one man, for purely political purposes and in my political machinery it would be nine times as important to me. You cannot divorce any proposition from politics in that sense and instead of taking this out of politics you put it into politics, and if you say to me that you can take nine men from this State

who will take charge of this great work and divorce themselves absolutely from politics, then I say to you that the millennium has come. The leopard does not change his spots. Human nature is about the same to-day as it has ever been. When a man is under the appointment by an Executive he feels friendly at least toward him and I never yet have seen the Executive in this State that did not play politics just as much as the fellow down in Cattaraugus county and up in Saratoga. If there has been a nonpolitical Governor please name one. If there was ever one I would like to hear of it. Look back over history. Are the ambitions of men different in the Governors of to-day from what they ever were, and do they do these things differently than they did years ago? Not so far as I know. You cannot therefore remove such things from politics. There is not an example in the history of this State's business where authority has not been concentrated where you could put your hand on it, where you get as good service as when you do concentrate. And I object to this board of nine because there is no concentrated authority. Who is going to put his hand on the particular factors in this board that are clogging the wheels? One man denies that he is responsible and the next man denies that he is responsible and you cannot find where the trouble is. Why if you wanted to hit anything in that commission you would be in the same position as the boy from whom the elephant stole the gingerbread, and a man asked him, "Why don't you turn around and kick the elephant?" And the boy said, "I would but I don't know which end to kick." You could not find the place to put your hand on it and its term is nine years and it is in the Constitution, and the result will be that it will go from bad to worse, with no interference of course as time went on. Therefore I object to it. There is no concentration of responsibility. Why, the history of the world is full of the fact that you must concentrate power somewhere in an individual and say to him it is up to you. For two and a half mortal years of the Civil War we had no concentration of authority in our generals. By and by the great Lincoln picking out Grant said to him, "You have the power, you control all the armies of this country, go at it and beat them out." Grant, with that concentrated power saying to his deputy here, Mr. Sherman, and his deputy here, Mr. Sheridan, "Go here," and to Mr. Meade, "Do this, go yonder," and what was the result? Constantly from the beginning there was business and by and by victory and then peace. Concentration of power and authority.

You cite to me the proposition of the Regents of the University. What has the case of the Regents of the University to do, that compares with what this board has to do? They have a mere matter of educational policy, a single thing to consider and they

give attention to that, and everybody knows it. I am not mistaken there. I have been here for eighteen and one-half years in touch with these things and I am not mistaken there. I am against it for the reason that such a commission has never resulted in good. Now let us see a minute. What is the history of the State in this Department? We started back in 1872 and we had a commission composed of splendid men first, and there were no less men than Horatio Seymour, Patrick H. Egan, William B. Taylor, George H. Raynor, William A. Wheeler, Verplanck Colvin and Franklin D. Hough, in the first commission. Get the report and see how much that commission did. Just look at it. What next? Then by and by you had a commission composed of four men, and they were splendid men. Then down in 1885 you had a commission composed of Sherman W. Kneevals, Theodore B. Basselin and Townsend Cox. Can you find better anywhere? And what did they do remarkable in this great and most important subject, the most important subject that the people of the State have got to deal with and, aye, the most important that the people of the United States have got to deal with. What did they do? And by the way you have another Forest Preserve Commission, legislated out of office and the commission known as the Forest, Fish and Game Commission, which took over the work and that is composed of one person, D. Middleton, who was a splendid business man; Charles H. Babcock, a very splendid business man, and Thompson, one of the greatest fish commissioners that ever came to our State. What did they do? Anything but sleep? Then we came down to the single-headed commission and a splendid business man over in Watertown had charge. I think it can be said he was not interested in the work and there was a tremendous amount of work but all this time these wonderful commissions had two and a half acres of tree garden. In Japan at Tokio in a country which seventy-five years ago lived in oriental exclusiveness and the world had never looked in on them ever before that time; a nation which had never seen the light of civilization until seventy-five years ago; they now have hundreds of acres of tree gardens. And our entire State had only two and a half acres of tree garden. Now I am not going to say a single word about the years when I was commissioner. I am going to simply ask you to look at the record. Those two and a half acres grew to thirty acres, and would have been much more, had the State given us the money.

Mr. Quigg — Isn't it the fact that it is practically since you were in the commission that public interest in conservation has been excited through our State? Before in the commissions that you have spoken of, before that, isn't it a fact that public interest in the work of those commissions was not stimulated in the country?

Mr. Whipple — I would be glad to answer Mr. Quigg and say to him that that is substantially true but the thing that started that agitation was the six hundred public speeches made by me before the magazines ever took up the subject in this State, before the six hundred audiences in this splendid State, because you had somebody in that commission with a heart that was doing these things. That is the truth about it, and that was before Mr. Pinchot started that work in the National Department. Now I want to be excused just as far as I can from anything personal about my own administration. The record is there. Examine it. I will conclude by just saying this much more, Mr. Chairman. Mr. Austin and Mr. Osborne were the commissioners for a few moments and then the Legislature went back to a four-headed commission—a three-headed commission. Then we have tried all these others and we have gone back to a four-headed commission and I have not a word to say against this Commission. I believe Mr. Van Kernen is an able man. I believe the gentleman from Troy is an able business man, but I ask you to look at the record and see what progress was made. Was there an acre of land added to the preserve? Was there any special change in the whole work of that commission that was progressive or of importance in those four years? Could any man go to that department and get a decision in a month? They said "We will meet in two weeks from now and we will let you know." And then they disagreed—and I will stop here now, Mr. Chairman, for luncheon recess.

Mr. Wickersham — I move that the Committee do now rise, report progress and request leave to sit again to continue the discussion of this measure and that it retain its place on the calendar.

(President Root resumes the Chair.)

The President — The Convention will come to order.

Mr. J. G. Saxe — Mr. President, on behalf of the Committee of the Whole, I beg to report progress and ask leave to sit again on the matter pending before the Committee.

The President — The question is upon the granting leave to the Committee to sit again for the consideration on the conservation measure as unfinished business in General Orders. All in favor of granting the leave will say Aye, contrary No. The motion is agreed to and the subject of conservation will be the unfinished business upon the reassembling of the Convention at 2:30.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules begs to submit the following report.

The Secretary — Mr. J. L. O'Brian, from the Committee on Rules, reports as follows:

Resolved, That the following Proposed Amendments to the Constitution on the General Orders calendar be made Special Orders for the time specified:

General Order 50 (Conservation), if not sooner disposed of, Monday morning, August 9th.

General Orders 30, 31 and 33 (Militia), the session of Monday August 9th, following General Order 50.

General Order 43 (Indians), Monday afternoon, August 9th, following General Order 33.

General Order 46 (Budget), Monday evening following General Order 43 and Tuesday.

General Order 28 (Taxation), Wednesday, August 11th, following General Order No. 25.

General Order 50 (Cities), Thursday morning, August 12th, and Friday.

General Order 38 (Public Utilities), Saturday morning, August 14th.

The President — I call the attention of Mr. O'Brian to the fact that there is a clerical error in this report setting the budget for Monday afternoon. It should be Monday evening.

Mr. J. L. O'Brian — That is a clerical error. It should read Monday evening.

Mr. Wickersham — Mr. President, may I ask that that be reread?

Mr. J. L. O'Brian — Mr. President, this program covers the daily work for the entire week of next week.

Mr. Quigg — Will Mr. O'Brian excuse me? A request has been made to have it reread and I hope it may be.

Mr. J. L. O'Brian — Mr. President, if there is no objection I will read it and explain it myself. The special order Monday morning will be conservation in case it is not disposed of to-day. Following that on Monday morning, or as soon as reached, the three General Orders relating to Militia, No. 30, No. 31, No. 33; on Monday afternoon the General Order will be the order following that, and following that will be the subject of Indians which is now unfinished business of General Orders. On Monday evening General Order No. 46 as Special Order and that also will be Special Order for all day Tuesday. On Wednesday, following the matter which has already been set down for Wednesday, the bill relating to privileges and immunities discussion will be taken up. On Thursday morning, all day Thursday and all day Friday, unless otherwise disposed of by the Convention, General Order No. 50 (Cities), commonly known as the Home Rule proposal. On Saturday morning, and all day Saturday, Public Utilities.

Mr. Marshall — I think on Tuesday afternoon you have set the subject of Indians?

Mr. J. L. O'Brian — Monday afternoon.

Mr. Marshall — That will probably take a very short time. We will then take up General Orders which are not enumerated?

Mr. J. L. O'Brian — Yes.

Mr. J. G. Saxe — Mr. President, I would like to ask if there could not be included in Monday or Tuesday's business, General Order No. 48 by the Committee on Suffrage, which means one section generally and could probably be disposed of in an hour? There are several other subjects which probably cannot be brought up until that is disposed of and I ask the majority leader if that could not be placed for Tuesday, and I hope it may be so arranged in time, either on Monday or on Tuesday. I do not think it would take more than half an hour or an hour.

Mr. Wickersham — I should think the only difficulty about that would be with the budget, whether it is supposed to include all of Tuesday. I see no objection to adding that to the calendar except this one matter.

The President — Mr. Saxe proposes to add General Order No. 48 to the Special Orders for Tuesday?

Mr. J. G. Saxe — For Monday. I will put it ahead of the budget and if it cannot be put on we won't have to do it.

Mr. J. L. O'Brian — I should personally oppose putting anything more ahead of the budget because Monday is occupied with Conservation, Militia, Indians and the budget. Tuesday has the budget and there may be time of course, at the conclusion of any of these Special Orders in a given session, to bring up some other matter. I would suggest that the delegate, Mr. Saxe, move the matter of Suffrage when we go back from the Special Order into General Orders and in that way dispose of it. It would be very difficult to change this program now.

Mr. J. G. Saxe — I would consent to place it either Monday or Tuesday. If we find it cannot be taken up, I won't move it.

The President — Mr. Saxe moves that General Order No. 48 be included under Special Orders for Tuesday.

Mr. J. L. O'Brian — Following the budget?

Mr. J. G. Saxe — Any time you prefer, Mr. Chairman; I think it will not take more than half an hour or perhaps an hour.

Mr. J. L. O'Brian — I shall not object to that. The amendment is accepted.

The President — The resolution will be considered by the Convention as amended. Are you ready for the question on the resolution?

Mr. Hale — If I may, Mr. President, on behalf of the Committee on Public Utilities, suggest that several gentlemen, like Governor Sheehan and others, asked whether or not Public Utilities would be reached the coming week. I had no authority for saying that it would or would not but I said that in my judgment it would not be reached until the week after and I am afraid that

some of these gentlemen who would like to be here may possibly have taken what I said on that subject as an indication of the action of the Committee and if it were possible to substitute some other subject I would be very glad indeed.

Mr. J. L. O'Brian — I suggest that this stand as it is subject to change next week if some other measure is provided in its place. It would be impossible to conduct the business unless we can have some general system about it. If Mr. Hale desires next week to move to change this, I think we can consider it, but we are now giving eight days to this subject —

Mr. Blauvelt — I think the subject is of such a nature and so important that it should have a day like Tuesday or Wednesday or Thursday, when we are certain of having more than a bare majority of delegates present. While it may be the purpose to get and to hold a quorum here on Saturday, I have not the slightest doubt in my mind that many of the delegates will be absent on that day.

Mr. Wickersham — Mr. President, it is the intention, as I understand, of the Rules Committee in submitting this program to give notice now to the Convention that we have entered upon that stage of our work when we cannot arrange our plans with a view to going home on Saturday. In order to get through the work before this Convention within the time allotted it will be necessary from now on to devote ourselves to this work to the exclusion of any private engagement whatever, and the work cannot be finished unless the delegates come here with the intention of remaining and doing six full days' work, and in putting this important measure on Saturday's calendar it is a notice to all the members that Saturday will be a working day just as completely as Monday or Tuesday, and I therefore hope that Delegate Blauvelt will not object to that disposition.

Mr. Westwood — Well, Mr. President, I have no doubt that every delegate to this Convention who can by any physical possibility arrange it to be here on Saturdays will, but that is just a little aside from this question. It has been generally understood by those interested in the subject of Public Utilities when this measure shall be considered, that it will not be considered until the week following the week which is the subject of the resolution just reported by the Committee on Rules, and, because of that and not for any other purpose, nor for the purpose of disarranging the program which has been prepared by the Committee on Rules, I think the Committee on Public Utilities feel in a situation where they would like to ask the Committee to rearrange the schedule, so far as the Public Utilities matter is concerned, and for that reason I would like to move, as an amendment to the report, that

the matter of the Public Utilities Committee be set down as a Special Order for a week from Tuesday, which will not, of course, interfere with the adjournment being taken on Saturday to the following Monday, or other matters as next week's business may suggest.

Mr. J. L. O'Brian — In all due deference to the wishes of the delegate who has just spoken and the other members of your Committee, I respectfully object to this amendment, and I hope it will not be adopted. If we are going along any further on the theory that Saturday is to be devoted to unimportant matters, why, we may as well consider Saturday as a day which is not a Convention day. This program has been as carefully worked out as the Committee could work it out, and I think that an important measure should be set for next Saturday, which is a week and one day away, and everyone has eight days' notice of it, and it may be, and probably will be, that a matter of the importance of the Public Utilities will take more than one day, but at this time I object to changing this schedule; for one reason, which may not seem to the rest of the Convention to be important, it will indicate to the Convention that next Saturday is not to be an important day. Now, I have sent to the desk another resolution from the Committee on Rules, which will be read in a moment, providing for the sessions of next week, and also providing that to-morrow there will be no session of the Convention, in order to give all delegates time to go home and bid adieu to their families before entering the trenches. Beginning with Monday morning, this Convention goes right into action on Special Orders, and that must be done. If, as the work progresses next week, it is apparent that there are other unimportant measures, measures of slight importance, which can be transferred to Saturday, very well, but I think that the time has come when individual members and members of committees must yield their personal preference to the desire of the whole Convention to get at this business and complete it, and, therefore, I trust Mr. Westwood's amendment will not carry.

Mr. Westwood — Mr. Chairman, upon the suggestion of Mr. O'Brian that perhaps in some way this matter may be rearranged during the next week so something can be substituted for the matter referred to for Saturday, I will withdraw the amendment that I have proposed.

The President — Will the Convention indulge the Chair in the statement of the results of a little computation? To-morrow, Saturday, will be the 7th of August. We are now in the fifth month of the service of the Convention. After all the consideration of the Committee of the Whole and the action of the Convention upon its reports, we shall still have the third readings of bills and the

debates which the rules allow upon third reading. After all the third readings are finished and all the amendments have been adopted, as required by the existing Constitution, we shall place our work in the hands of the Revision Committee for at least five full days. Upon their report we have still to act, under the Constitution, and complete our work as a whole. If our work is to be presented to the people at the coming election, it will be necessary that we act finally on the report of the Committee on Revision not later than Saturday, the 11th of September, and that will make it necessary that we finish our work upon the third readings of proposed amendments not later than Saturday, the 4th of September, in order that five days will be given, and there will be a recess necessary of five days for the Revision Committee to do its work, and we must reserve a couple of days for consideration and action on their reports. We have, then, only to Saturday, the 4th of September, in which to carry on our discussions in the Committee of the Whole, act upon the reports of the Committee and do the business of the third reading of bills. That will be but four weeks after to-morrow. Twenty-four days, twenty-four secular days. That is the time left in which we can do our business for which we have been preparing for four months. If we lose from those twenty-four days the Saturdays, there will be but twenty left. If we lose Saturdays, we necessarily lose Mondays, in substance, because the loss of Saturdays means the delegates go to their homes and do not return here for effective action during the daytime of Monday. That would mean four more days lost, leaving but sixteen days for the discussion and the action upon the great measures that are pending and which are to be reported in this Convention. It seems impossible that we shall perform our duty unless we make up our minds to remain here without returning to our homes at all until the conclusion of the work of the Convention to the point of placing it in the hands of the Committee on Revision. That is what the last Convention found it necessary to do six days before the Committee on Revision was called, and we are two weeks later than then in the consideration of that action. I state these figures in the hope that they will bring sharply to the minds of the delegates the fact that the question now is whether we shall throw away all our labors and fail in the performance of the duties which we have undertaken and which we have sworn to perform, or whether we will make up our minds to stay here the entire time and finish the work we have begun.

The President — The question is on the adoption of the resolution reported by the Committee on Rules. All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

The Secretary will report the further resolution.

The Secretary — Mr. O'Brian from the Committee on Rules: Resolved, That on and after Monday, August 9th, the Convention sit from 10 a. m. to 1 p. m.; from 2:30 p. m. to 5:30 p. m.; and from 8:30 p. m. to 10:30 p. m., except Saturdays, on which day the Convention sit from 10 a. m. to 1 p. m., and from 2:30 p. m. to 5:30 p. m.

Resolved, That when the Convention adjourn to-day, it adjourn until Monday, August 9th, at 10 a. m.

Mr. J. L. O'Brian — I move the adoption of the two resolutions as read, Mr. President.

The President — Is the Convention ready for the question? All in favor of the resolution will say Aye, contrary No. The resolutions are agreed to.

The President — The hour of one o'clock having arrived, the Convention stands in recess until half past two o'clock. Whereupon, at 1:25 p. m., the Convention took a recess until 2:30 p. m.

AFTER RECESS

The President — The Convention will come to order.

Mr. Quigg — Mr. President, we have been engaged all the morning on what is really general debate upon the Conservation Amendment, although as a matter of order it is debated by paragraphs. Now, if we are going to give regard to the rule we have adopted to-day for the business of next week, it seems to me that there should be a limit at least, in accordance with the rules, in accordance with the general rules, and I move that debate be limited in the further considerations of the Committee upon the proposition to fifteen minutes to each member.

Mr. Marshall — I do not think you ought to do that now.

Mr. Whipple — Mr. President, I make the point of order that the Committee of the Whole has no jurisdiction over its procedure. The Committee, of course, abides by the rule but it does not seem to me that this Convention will undertake to regulate by limitation, debate in the Committee of the Whole. As far as I remember, that would be an unheard-of thing in all parliamentary practice, and I don't think it desirable. I think all the gentlemen will be as brief as they can; I certainly shall be.

Mr. Wickersham — Mr. President, I hope this motion will not prevail now. When we get a little farther on, undoubtedly there will have to be a time limit set, but the Committee on Rules has not reported in favor of such a proceeding at the present time, and I think it is a little premature.

Mr. Marshall — I don't think that there has been any time wasted thus far in this discussion, because, although preliminary, it has served to enlighten the Convention as to the purposes of the framers of this provision. I think that it is more desirable that we shall continue in session until we shall have completed consideration of the entire article, and if it is now in order I will move that the Committee of the Whole be instructed or be authorized to continue in session after five-thirty, until such time as it may determine, and if the discussion shall not have been concluded during the afternoon session, that we meet this evening at eight-thirty, for the purpose of completing the discussion, if possible, or continuing it if we cannot complete it.

Mr. Quigg — Mr. President, if the gentlemen will look around, they will see there is not a quorum here now. Now, I do not want to make that point, but it does seem as though fifteen minutes to each member on a pending amendment ought to be enough. There is a pending amendment in the Committee, and it does seem as though fifteen minutes' discussion ought to enable us to get the sense of every member if every member wanted to speak on it — to get the sense of the discussion I press my motion. I don't think it is subject to Mr. Whipple's point of order, for I suppose we can direct the Committee as we choose.

The President — The Chair thinks that under the combined effect of Rule 25 and Rule 26, in order to limit the time for debate the Committee on Rules must report on the proposition. The motion should go to the Committee on Rules. The Chair thinks that the subject of limiting the debate is, by the rules, to be considered upon a report of the Committee on Rules.

Mr. Marshall — I move that the Committee of the Whole be authorized to sit after five-thirty this afternoon, if it so desires, and that if the discussion is not completed during the afternoon session, such Committee be permitted to reconvene this evening at half-past eight and continue the discussion of the conservation article.

The President — Mr. Quigg's motion has not yet been disposed of. Unless there is some further observation to be made, the Chair will refer the motion to the Committee on Rules.

Mr. Quigg — Mr. President, I ask unanimous consent for its present consideration.

Mr. J. G. Saxe — Mr. President, the motion is, in effect, to amend the rules, and, therefore, it requires one day's notice and must automatically go to the Committee on Rules. The rules provide for unlimited debate in General Orders, and if it is proposed to amend the rule so as to limit debate, the motion ought to go to the Rules Committee.

Mr. Quigg — Mr. President, to get the sense of the body, I ask unanimous consent for the present consideration of my motion.

The President — Mr. Quigg asks unanimous consent for the present consideration of his motion. Is there any objection?

Mr. Wickersham — I object.

The President — Objection is made. The motion made by Mr. Quigg is referred to the Committee on Rules.

Mr. Quigg — I move that the Committee on Rules meet immediately to consider the motion.

The President — The Committee on Rules is requested to meet in the President's room, immediately upon the reconvening of the Committee of the Whole.

Mr. Marshall moves that the Committee of the Whole,—the Chair suggests that the motion should be that the session of the Convention continue until some later hour than five-thirty.

Mr. Marshall — I accept that suggestion.

The President — Will Mr. Marshall fix the time?

Mr. Marshall — Until six-thirty, and that we then reconvene at eight-thirty, to consider in the Committee of the Whole this subject of conservation, unless the discussion is completed before that hour.

The President — Mr. Marshall moves that the session of the Convention this afternoon be continued until six-thirty and that then the Convention take a recess until eight-thirty, for the discussion in the Committee of the Whole of the pending Special Order, it being dependent upon the Special Order not being reported by the Committee in the meantime. Is the Convention ready for the question? All in favor of the motion will say Aye, contrary No. The Ayes have it and it is so ordered. The Convention will now return to the Committee of the Whole for the consideration of the Special Order, and will Mr. Saxe resume the Chair?

Mr. Barnes — Before that takes place, may I move to amend a bill and have it recommitted to General Orders?

The President — The Secretary will read the title of the proposed amendment.

The Secretary — No. 754, Proposed Constitutional Amendment to amend Article III, in relation to the powers of the Legislature.

The President — It is moved that the Committee of the Whole be discharged from further consideration of this amendment; that it be amended as indicated and recommitted to the Committee of the Whole. Is there any objection? There being no objection it is so ordered. Mr. J. G. Saxe will resume the Chair.

(Mr. J. G. Saxe takes the Chair.)

The Chairman — The Committee will come to order in Committee of the Whole. During the recess Mr. Whipple agreed that when his motion to amend is called up, it may be called up in two parts, because if the first half of his motion is decided adversely, it also virtually decides the second part. In that way, we will not get into the other question which is raised by the second part of the amendment.

Mr. Whipple — Mr. Chairman, when we adjourned I was trying to furnish a few reasons that occurred to me why a board of nine men without pay would not be so good for service in this department as a single-headed commission where the responsibility is fixed and centered. I have been led off a little by a query or two into a line of argument that I would prefer to present on section two. My intention has been to keep close to section one, although gentlemen speaking before me have covered the whole question of conservation, at least as they saw it. I noticed in my colleague's statement, Dr. Dow, from my Senatorial district, who is the Chairman of this Committee, a poetic name or appellation that he applied to this proposed wonderful unpaid board of men who are going to contribute their services to the State for ten years for nothing. He calls them "Grecian statesmen." Well, if he can show me any example in the State of New York where any man for a long term of years has resembled what he seems to think a Grecian statesman was, I should like to have him pointed out. Now, I would like to have the Committee bear in mind this thing. This is an entirely different thing in fact than for a board or commission to establish a great library in the city of New York, as Judge O'Brien suggested. Of course a committee does well in such a case. They can step out of their offices any minute and meet, and in fifteen minutes get back to their offices, and give such time as is necessary. That is common. This is different from the Library Association. It is different from a park commission. I happen to be the chairman of the Park Commission in my little city. I do not have to devote much time to it. There is not a great deal to do. I give it a half hour's attention in the morning and go to my office, and probably a half hour in the afternoon, sometimes nothing at all for a week, and it is not a big thing. It cannot be compared with or used to illustrate the efficiency or inefficiency of this Commission. You are going to ask, for these positions, I assume, men of means, men of ability, men of responsibility, men of training, men of business experience, one in each judicial district of the State, to give a lot of time to this subject. If they do not give a great deal of time to it, they will accomplish nothing. No man can understand this subject in a day, a week, a month or a year, and

no man can thoroughly comprehend it so that he can say what ought to be done, unless he gives his time night and day to it for years. The duties and the subject-matter are comprehended by the limits of the State. It is a thing that requires the most accurate, close, systematic attention. How can this board say what the policy shall be in relation to the timber or the management of the timber or the questions that are numerous in the Adirondack country, unless they know about the Adirondack country? How many men in this body of 168 men know all about the Adirondack country? Mr. Meigs, my friend, has been there for twenty-five years, a lumber man, and he knows about it to a large extent. How many could answer a hundred questions that might be propounded to them, as to where this lake is or that lake is, this township in this county or that township in another county, or what ought to be done with it, or where the fires occur, and where the stuff should be removed, where Long Pond is, for instance, in St. Lawrence county, or Lost Lake in Herkimer and St. Lawrence, or any one of ten thousand other questions that might be asked. How do you expect this board of nine is going to settle upon a policy about a forest that is 150 miles square in the Adirondacks and an immense forest in four counties of the Catskills, unless they know about it? And do you think for a single minute that you are going to get nine men who will give their time, without pay, the kind of men we must have on this commission, if this prevails, that will acquaint themselves with this work? It is impossible. In the first place, a man who is at the head of it ought to be a woodsman by instinct and training and birth. Then he ought to have years and years of experience as a lumberman and all of the knowledge that he would gain from that. Then he ought to live in the forest for years and years. Then he ought to give his entire time to it, and then he cannot give as good services as the State deserves. This subject, as has been said here to-day, is one of the most important subjects that you can consider in this Convention. If you could have the services of my friend Meigs as commissioner, divorced from any other interest, you would have a man of experience, you would have a man who knows. What other man here has that knowledge that he has? How many in the State? Why, it is a subject, when first discussed ten years ago, that not one man in ten thousand in your audiences knew anything about. When you got through speaking about it, they would come to you and tell you so, and say, "This is a great thing. We have never dreamed of it, although we have loved the woods and the water all our lives." You are going to elect nine men with supreme authority to make the laws, to usurp the right of the Legislature,

and expect they shall know what the laws ought to be. What will the majority of such a commission know about the fisheries, for instance, on Long Island? Will they know that bass hatch thirty days earlier in the Allegany river than they do in Lake George? Will they know what Lake Otsego requires as against some lake in the northern counties? I am trying to impress upon you some of the difficulties in order that you may be able to judge when you vote whether you want a commission that cannot know about this or whether you want to have the Governor select some man and put upon him the responsibility, a man with years and years of experience, and pay him for it. Now, I can see how a man, a gentleman of wealth, might devote some of his time to the State service. We are doing that here for nothing. We are doing our best, but at most it is only for one summer. But could we stay here and devote ten years of our time to the service of the State? Would we give it our best efforts? It never has been done and it never will be done, and those who propose this, although they are dead in earnest about it, are talking about purely a dream in statesmanship and management of State affairs. The whole history of the human race says it cannot be done. It never was done.

Then you lose by this very bit of force you would get by having one man, a man who can select his subordinates, who can put about him advisers, who puts at the head of the water department a skilled engineer, at the head of the fisheries department a man like Dr. Bean, the greatest authority in America or any other country; who puts at the head of the forestry department a man like Mr. Pettis, or Mr. Pinchot, or Mr. Groves, and they are his counselors; they are his board, they are experienced men; they are getting paid. Don't you think that those five or six men, heads of departments, and this one man, would get nearer right than those nine men that meet once a month? Did you ever go to a board and try to get something through and then have them tell you that they would meet the fifteenth of next month, and you could not get anything done? Have you ever been to a department where there is a single commissioner, and he said, "We can do that; that is all right," or, after hearing you, he said he could not do it, and it was settled and you got action and had something done? Now, let us be perfectly fair about it. Would it be any more unreasonable to have a board of nine for the Agricultural department? Not a man here suggests that, but it is absolutely the same proposition. That department has to deal with farms, with land, with everything in relation to the greatest interests in the State, that is said to be the backbone of America — the farms. Why don't you suggest a nine-headed commission for

the Agricultural department; why don't you suggest one for the Highway department? You have tried a three-headed highway department, and you have gone back to one. What for? You center responsibility. You get action. Why single out this department that has back of it greater interest than almost any other thing and is really technical compared with many others, and ask to have an unpaid board of "splendid men," as you call them, advise a man about what to do and give them power to make laws and rules and regulations and appoint men and fix their salaries and discharge them? Why, instead of taking it out of politics, as is suggested, you will put it into politics. If a man desires to get on that board, he can get a political machine to reach the commission at least nine times out of ten. Now, personally, as an individual, I do not care what you do about this. I have no more interest than any other man in it, but in my makeup somewhere there is something that says that if you believe a thing, if you have got the reasons for it, stand for it! And, born of an experience of fifty years in the woods, and eighteen years' experience in the public service, I say to you that, within five years, if you make this board of nine, you will be willing to confess to me, if you meet me, that it is a failure. You are making a mistake. It is a theoretical thing, based upon no facts, but upon the imagination of the brain. It is a dream, and it is proven a dream by every experience of the people in every department of State. Now, you are concentrating authority here in these bills that are going to be presented. You are going to reduce sixty or one hundred departments to ten, they tell me. What for? To concentrate, to get your hands on fewer men in the public service, and yet you widen it out in this. Is that logical? Is that sensible? What is the point about it? Don't you men know that some certain lot of men in sixteen or eighteen or twenty counties, if they have got something that they want to put through this board, with three men on that board of nine, that they would control it if they attended every meeting of the commission? Five is a majority, three of the five can control. I will bet one hundred dollars to a cent that, ninety-nine times out of a hundred, the whole nine are not there. But the three men who want to do things will be there always and when there are but five men present they control. You are building up a great machine for a splendid purpose, but you are doing it without thinking about it, under the sophistry of the eloquence of the men who have spoken and will speak here.

Take my friend Marshall, and of this great Convention I love none more than he, and I speak in all kindness, but never was there a better speech made against this proposition than he made in the

Committee. He is able to make it, more than I am, a thousand times more, but you cannot beat the facts that are written on the pages of the history of your State, you cannot do it with eloquence, with oratory, or with sophistry. Now, I have figured that it will cost for this commission in expenses about \$15,000 a year. My friends, if you would take that \$15,000 a year and put it into a tree garden and raise some trees and plant them, you would be doing a service to the State that would be so far above this mistake, that so many of you are attempting to make, that you would be proud of the act some time in the future. Fifteen thousand dollars for what? For nothing. They cannot benefit the State. They cannot benefit the State because if they put the right kind of a man on the commission and they don't pay much attention, he will run it; and if they put the wrong kind of a man there and they don't pay much attention, he will run it. It is a luxury, a decoration, a sop to people who think that this would take it out of politics and make it a little safer. Nothing of the kind. There is nothing in the administration of public affairs that makes a thing so safe as to put the responsibility onto one man, and let him do his best, and then you can get something done and you don't have to wait all day. That is entirely the right thing to do in administrative affairs. Now, substantially, these are the reasons why I oppose the nine-headed commission. There are a lot of other reasons that could be urged, but it does not seem to me as though it was necessary, if I am right about this statement of the facts, to urge another move. I do not propose to make an address or a speech or a talk upon the main proposition contained in section two of this bill until we reach it. I am talking about section one; and my proposed amendment is a one-headed commission as against a nine-headed commission — the simplest proposition in the world — and I have tried to furnish the reasons for it, and with that I shall be content.

Mr. Aiken — It is with diffidence that I arise to oppose the report of the Committee, but I am compelled to acknowledge the force of the reasons given by Delegates Austin and Whipple in favor of the single-headed commission. Of course the Legislature has passed many laws with reference to game in a single session, but it seems to me that it is not from the point of view of the game that we are to regard this measure, because there are other things besides game that this commission is to have control of, and the main thing, in my judgment, is the control of the waters of the State. In the next twenty years I look to see a great development of the water power of this State. The Legislature has acted upon it in a tentative way. Last session the Legislature passed an act in reference to water storage and water power, and previous to that time

they had passed an act which is article seven of the Conservation Law in reference to river improvement. Now, under that article in reference to the river improvement, the Conservation Commission have had some experience, because they started an improvement which is nearly completed at what is called Canaseraga creek, located in Livingston county. Now, before such an improvement is made what is necessary on the part of the commission that has to deal with it? After the petition is presented, they have to view the property, view the land. If they decide to go ahead with it, then they have plans and specifications drawn, which is an engineering proposition. After the plans and specifications are drawn and a map is drawn, then they have a hearing on that plan. If they decide then to go ahead with it, then there is the question of acquiring land, easements, which has to be done by condemnation proceedings, or by obtaining deeds, and that is a matter that cannot be farmed out to subordinates, because it requires judgment as to the value of the lands and what land should be acquired, and after that, then they have to let the contracts, and if a contractor fails to go ahead with his work, as was the case in this Canaseraga improvement, then they have to terminate the contract and go ahead themselves with the improvement. After that there is a question of assessment which cannot be farmed out to subordinates, but requires judgment, and the commissioners have to make the assessment for the benefit. Now, where can you get nine men together for all these steps in a proposition of this kind; men who serve without pay? It is really a matter where you have got to have experts; men who are acquainted with water powers and water power development and who can spend their whole time in any proposition that is submitted to them, and it seems to me that a nine-headed commission will be unworkable, so far as water power development is concerned.

Mr. Dunlap — I did not intend to say a word about Section 1, the administrative feature, but I believe that is the important feature about this bill. For some reason or other, with the various commissions and boards that we have had for years, and their results, the people have had a very great doubt about the administration of the forests. In fact, they have been so wrought up over the matter that they have written many of us asking us to get the matter out of politics and put it on the basis where the people would have confidence in the administration. In every case of the appointment of a single-headed commission, or three commissioners, they have invariably taken a politician from one party or the other without any sort of knowledge of the condition in the Adirondacks and made him the commissioner, or if he was not a

politician they have selected a personal friend who has no knowledge of the situation and who must acquire his knowledge by experience. Years ago it is true that nothing was done in the forest, for the people had little idea of the situation or the importance of it. There were a few acres of land owned by the State. The policy of the State, if it had any at all, was to let most every one grab up all the land that was worth anything. Finally there came a time when the people began, at least a few of them, to realize the importance of the Adirondacks and of the Catskills, and they then began to inaugurate the principle of acquiring the land, retaining what they had, and in fact they reversed their policy. Occasionally the Legislature appropriated some money to acquire lands, but generally not enough to acquire what they ought to have done. The result has been that a great many thousands of acres of land have been purchased by private owners at small prices, that the State should have taken, and that we will eventually have to buy and pay a large price therefor. They have taken but little interest, that is, the people have taken but little interest in the Adirondacks, until very recent times. With all these commissions, as soon as one administration goes out, leaving a four-headed commission or a two-headed commission, the next administration, in order to get rid of those, at least to make political plums for two or three followers, or one follower, they change it to a one-headed commission. In the past they have done it and they do it right straight along; and the result has been that, outside of Commissioner Whipple, the many-headed commissioners, or the one commissioner, have only remained in office for a very limited period, at least until the administrations change. Now, the idea of this proposition is to fix the commission so that it will not be possible for the Legislature, whatever its political complexion may be, to put out the commissioners and those in charge of the forests.

The idea of nine commissioners was to distribute it throughout the State, so that there will be some one in each locality with whom the people are acquainted and in whom they have confidence, so that a sentiment will grow up in favor of the forests and with the idea and the belief, and the belief is what we want most of all, that they are going to do what is best for the State. When that time arrives, and I believe it will, if we have a commission of this kind that cannot be removed and made a political football, I believe the people will feel that good work will be accomplished, and then they will be ready to go forward as they should, in a proper and progressive manner. Now, my friend Mr. Whipple says that no commissions have ever been a success. Take the Niagara Falls Commission. Take the Palisades Commission. He has not given

you one single instance of any commission of nine or eight or any number of men that has been appointed by the State that has not done good work.

Mr. Whipple — Are not the commissions you just mentioned, or were they not, purely local commissions doing a local business?

Mr. Dunlap — If the Palisades Park is a local business, why then it was a local proposition, or a local commission, but it was not local.

Mr. Whipple — The Palisades are not many miles long, are they?

Mr. Dunlap — No.

Mr. Whipple — It is not a big thing?

Mr. Dunlap — No.

Mr. Whipple — Niagara Falls Park is not so very long?

Mr. Dunlap — No, sir.

Mr. Whipple — Neither is Letchworth Park?

Mr. Dunlap — No.

Mr. Whipple — Neither is the library or city park?

Mr. Dunlap — No, sir, certainly not.

Mr. Whipple — Those are not big propositions?

Mr. Dunlap — No, sir, but the Palisades Park was important enough to be interesting to two States and they had a large commission and they met there and they attended to their duties year after year until they have accomplished their object. At Niagara Falls gradually the scenery, the water, and everything was being destroyed. Finally public sentiment was aroused and it was decided that it must be protected, and a commission was appointed of which the chairman of our Conservation Commission acted for many years as chairman. He did a wonderfully good work there and that commission did a good work, and accomplished just what we are seeking to do in the Adirondacks, to protect it and put it out of the hands of the politicians, and to build it up, conserve it, and accomplish what we are trying to do in this proceeding, in this bill. This commission is to be without compensation. It will not be a political plum that any Governor will undertake to appoint men on to pay political debts. You are not paying a very great political debt to a man by appointing him on some commission that does not pay anything, and the politicians are not pushing people very hard, generally, unless there is some money behind it and there are some appointments following it. Now, Mr. Chairman, there is to be no salary. These commissions will stand in the place of the Governor, and they, instead of the Governor appointing the superintendent, or the manager, or the head man, or whatever he may be called, of the Adirondacks and of these various parks,—they will select men for the various positions who are thoroughly competent.

They will have the benefit of his advice and of his assistance, and it is not expected that a commission of that kind, that they are going all over the Adirondacks and find out some little question, but they will determine with the expert that they will select, who will be as great an expert, at least, as if he was a single commissioner, and they will confer with him and accept his advice on a great many things; they will counsel together and decide upon the general policy to be pursued. They will determine the game laws after consultation with experts, and not arbitrarily, and they certainly know as much about the game laws, and what is necessary in the way of game laws as the members of the Legislature do, many of whom would not know a partridge from a woodcock. They pass laws every year without any sort of idea, except the advice they get from the Conservation Commission. Now if the Conservation Commission is composed of men at the head of it who give their time and experience and learn about those things, if they are competent to advise the Legislature what laws ought to be passed, they are certainly competent to determine what the law itself ought to be. I believe as firmly as I believe anything that this is the proper solution of that question. We have got to put this Conservation Commission in some form so that it will meet with the approval of the people. A one-headed, two-headed, three-headed commission, as we have had heretofore — I don't know as we have had a two-headed commission, but a one-headed or three-headed commission, for some reason or other, has not given the people that confidence in the administration of the forests that they should; not that I mean to charge dishonesty, but they feel there has been too much politics in it; too much favoritism in it; and we are trying to get a board of first class men who will put it down to a good sound business basis, with thoroughly competent men under them, and, thereby, as I stated before, create a feeling among the people of the State, that this subject needs further attention on the part of the people with suitable appropriations to accomplish what is to be carried out and then the great work of the Constitutional Convention or the Commission will ultimately result in good and for the benefit of the people of the State.

I had intended to say something about the other section, but will not do so at this time. This Committee gave this question most careful consideration. It is the proposition suggested to it by the School of Forestry, by all the distinguished writers — or many of them who write upon the subject. Nearly all advised us, nearly every man who came before the Committee suggested that something similar to this should be provided in which the people had confidence, and, as they almost universally said, take it out of politics. If we cannot get it out of politics by a commission of this kind, then we must throw up our hands and admit that we

are not competent to run the government of the State of New York, and particularly, of this department. With one man as a commission with no experience, if he is better qualified to run this department than a superintendent who is an expert, with the advice of nine good men, then I am very much mistaken.

Mr. Ostrander — I do not wish to take up the time of this Convention to discuss that iridescent dream of getting this Commission or any other State Department out of politics, and I ask the gentlemen who are spending time upon that to remember that my lip is cracked. Neither do I expect to take any time over the question of the civil service provisions which are in here, because it does not matter the slightest whether they are in or out. We all know the results in civil service are accomplished whether it does anything about it or doesn't. I have thought as I listened to the wonderful qualifications of the gentleman who looked after the forests, who knew when the buds opened in St. Lawrence and when the fish bite in the Champlain canal and who should have the pheasant eggs and who ought to have a camp site and all the other innumerable things that go to make it up — I have wondered what would happen to the State of New York if the wise gentleman should happen to die; and I have been wondering if it would not be a grand good thing to have a ten million dollar life insurance policy on him for the benefit of the State. We know how the national conservation proposition crumbled and went to pieces when Mr. Pinchot got insubordinate; and I have wondered whether perhaps the State would not struggle along with some new man in case a commissioner should die. I have also fallen into wondering whether the commission was as wise in large things as it is in small things. I rather fear that Section 1 here, which is going to give such large discretion to this commission, whether it be nine men or one man, is trying to do something that the Creator did not do for them, that is, give them discretion. I would be the last man in this world to throw a pole cat into this Convention, but I want to tell you one or two things that I have seen this wise \$30,000, and I don't know but \$45,000, commission do. I have lived to see such a body as that drag a man into court and have him fined, — for what? For saving the skin of a skunk that his dog killed in the chicken yard in the summer because it was unlawful to possess the skunk's skin in certain months. Remember, conservation. Saving a skunk's skin was what subjected the man to the fine. It was not that the dog killed it but that he saved the skin or conserved it. Now, you might suspect that such a thing would happen off-hand on the overzeal of a subordinate, but if you will go down and search the records of the commission you will find that that was done after mature deliberation by the commission, and that when the

press took it up, the Rural New Yorker, notably, and called their attention to it, they very sagely, and, I think, correctly, called the attention of the people to the fact that it was not killing the skunk and saving the skin, but having it, that constituted the offense against the dignity of the State of New York. Now, I know a case, where two little girls were on a canal boat up in the Elbow there above Whitehall, in the Narrows, of Lake Champlain, and the time got heavy on their hands, and they prepared little pin hooks and some threads and went fishing over the sides of the boat, and when the sun got up in the heavens a little and it was a little warm, they tied these threads to the handle of a dinner bell and went down into the cabin, where it was a little shady, and presently there was a great ringing of the dinner bell, and what do you suppose happened? Why, instead of a great fish, there was a game protector at the end of the line; and he said, "You have been guilty of having set lines and you have got to be prosecuted." Well, that was kind of supposed to be a joke, but the facts are written down to the game commission, and they were asked whether it was a joke or whether it was serious, and they, after considerable investigation and correspondence, said that they thought that called for action. Now, if the Lord has given them as much discretion about large things as it has given them about these little things, then I think we ought to have 1,000 men instead of one on this commission; because if you can draw a twenty-five cent jury anywhere in this country that would cut up such fool tricks as these \$15,000 a year commissioners do in these cases, I think their pictures ought to be preserved alongside those of the members of this Convention. But that is not all. Here is this tree-growing commission that has extended from a forest nursery of a few rods up to several acres. They grow trees. They put them out. We have got an agricultural department here that maintains a great entourage of people who learn how to fight bugs and how to fight worms that injure the trees, and if you will give them a chance they will send several men out there at any time, at considerable expense, to find out what kind of a bug it is.

Let us see what this Conservation Commission will do. If a man will set out an orchard, if he will set a lot of little trees to growing in an orchard, they will fine him eighty dollars for killing any of the rabbits that bite them off. Now, they will tell you that they have changed this a little bit. You can catch this rabbit if he is doing the injury, that is you can catch this rabbit or kill him. That is, if you can get him in *flagrante delicto* you can kill him. But the rabbit is never there in *flagrante*; he is gone. They will say, we will give you a little further relief. We will let you catch him with a ferret if you will take him under such conditions that

you cannot catch him; you must not put anything over the mouth of the hole; you must not sit there yourself, but after he has got a respectful distance from you, if you are able to shoot him, we will let you shoot at him. That is the rule of wisdom that they established with regard to the rabbit. We have heard of a commission up in our county who solemnly sat there and with the neighbors and the farmers who had the trees chewed up along the whole line by these rabbits, which ruined the orchards which were set out, and this Commission asked them if they believed it really was a rabbit that did it. They were told that all the insignia of the rabbit was found on the snow; and also that there was sufficient evidence to send a man to the electric chair but that nobody had been there all night to see the rabbit perform. Now, considered alongside of this, that if you let every man in Saratoga county loose with all the ferrets and all the dogs he has, he would work until he was gray and molly cottontail would still be in the majority up there after he got through, because the county is full of hedge rows and bushes and Saratoga is not alone. Many a county in this State has got its backyards and its cemeteries full of rabbits that turn out there beyond all counts and we have only to go over to the Australian country to know what the rabbit is doing out there, and yet the Conservation Commission is just as jealous of the safety of molly cottontail as they are of the constitutional provision which shall preserve it in its power in this State. I know of men who have gone to the expense and trouble of setting out orchards, up in the foothills of the Adirondacks, and have seen the deer come through and bite the tops of these orchards off and sit there perfectly powerless. Does the State pay anything for any of these damages? No. It never does, but it is willing to send a corps of professors up there to look over the stump of the tree which has been bitten off. If a boy would go up in the river where the ripples are all the winter, where it never freezes over, and shoot one of these sheldrakes, as we call them, whose flesh is not fit to eat anyway, I suppose he would be sent up for a long term of years, yet one of these sheldrakes could eat up more fish fry in one winter than a million such ducks are worth. I want to tell you that the country gentleman has not that distinguished consideration for the discretion of the fish and game commission which would warrant them in placing such a commission as that in the Constitution with full lawmaking authority. There are very few of these problems that would not wait until the next Legislature.

My friend from Greene, over here, concedes, I believe, that they should not have plenary authority, but he is willing to set them in motion until somebody can catch them and take it away

from them. I believe the best way to do is to stop them before they begin and let them justify their acts before they begin to work. For that reason, I think this first section should be amended, and while, perhaps, it is not just germane to this section, I have one other suggestion to-day, and yet I do not care to call your attention in regard to the other suggestion as yet. I do not know what a good old-fashioned Yankee would call a man who built a sanitarium at great expense and then locked the doors and put guards around it so that no one could get in, and yet that is just what has been done with the great people's sanitarium in the forest. You would not let a man in to camp on your life. You would not give him the privilege. What in the world is this for? If that good air is not fit to breathe, and if it is not fit to live in, and if nobody can be trusted in there, what is the use of having such a reservation? I think this commission could very well establish conditions under which a man could have a camp site, and anybody who wanted a camp site and who went in there, if you suspected him, why, you might require an undertaking of him for any damages he created, and let him in; but I think you will find that the man who is interested sufficiently to take his family up there for the sake of the forest and his health and the air, that he would be interested enough in the forest to see that it was not harmed. I think this provision which denies people the right to go in there never ought to be put in the Constitution, at least. It is bad enough if it were put in the law for a year or two. Now, what happens? We save all these partridges. If the country boy caught a partridge, we know what would happen to him; but the very day after the law is out, it is a strange coincidence that the men who are friends of the game protectors know exactly where to go with an automobile and clean up all partridges on the countryside in one day. There are several colored gentleman in the operation of the commission. I do not speak of any particular commission, but it seems to be inherent in things, and I don't think the power of such a body ought to be extended. I think it entirely possible that one man, even though he has as much wisdom as has been described here to-day, might lose some point of view that some of his associates, if he had them, might point out to him. Now, I offer as an amendment to this section that we strike out all of line 12, after the word "with", and all of line 13, and the first three words of line 14, including the word "thereof."

Mr. Mereness — Mr. Chairman, while Section 1 is under consideration, I would like to ask some member of the Conservation Committee as to the sale of lands owned by the State that are entirely outside and not part of the forest preserve, and which have come to the State as the result of a tax sale or some such way, has that been considered by the Committee?

Mr. Marshall — I can answer for the Committee: It was considered. The subject is not germane to Section 1, which we are now considering, but it was considered, and the Committee was opposed to making any suggestions on the subject.

Mr. Mereness — Which section did you consider, Mr. Marshall?

Mr. Marshall — We are now debating Section 1. Which has nothing to do with the particular subject, which would be germane, perhaps, to Section 2, or some other section.

Mr. Angell — Mr. Chairman, let me say for the information of Mr. Mereness that I have an amendment which covers the proposition he has in mind, which I will introduce when Section 2 is under consideration. I would like to ask Mr. Marshall, or some other member of the Committee responsible for the draft of Section 1, whether or not the words in line 9 of the section, on page 2, "and regulation of the waters of the state;" in their opinion interfere in any way with the authority in the particular regulated districts for the regulation and control of the waters of the State under the so-called Machold Bill passed last session of the Legislature.

Mr. Marshall — In answer I will say — although there is no particular reason for singling me out, because this is the report of the Committee — I have no hesitation in saying that there would be nothing in this provision which would interfere at all with such an idea as the gentleman has in mind, and I will also state by way of anticipation that the Committee on Bill of Rights is about to report an article which will deal especially with the subject of river regulation along the lines of the Machold Bill, indicating clearly what the intention of those who have had to do with the framing of this subject is. The fact is that the subject of river regulation and the water power of the State were considered by a joint Committee of Conservation and Bill of Rights, and that that joint Committee reached a conclusion with regard to the subject of river regulation and kindred subjects which will be made the subject of a Proposed Amendment by the Committee on Bill of Rights.

The Chairman — The question before the Committee at this time is on Mr. Whipple's motion, relating solely to the question of the administration of the Commission, whether it shall be a one-headed commission, or a nine-headed commission. Has any one anything further to say on that subject?

Mr. Meigs — Mr. Chairman, I am going to take but a moment of the time of the Committee to point out the fact that certain defects in the administration of such of the natural resources of this State as are now by law placed under the present single-headed commission will be cured by this proposed commission of

nine." We need continuity of purpose and stability of plan. It is a fact that the head of this department has been changed seven times in five years, and I will ask anyone if it is possible under such a condition to maintain a continuity of plan for the far-sighted development and conservation of the forests, waters and game of this State. Now this proposed commission of nine, each having a term of nine years, changing but one man each year, would insure a continuity of purpose. Again, Mr. Chairman, this commission of nine, being chosen, one from each of the nine judicial districts of the State, will be most representative in character and will represent the various interests in the various localities of the State, all of which are directly or should be directly in touch with the conservation of our natural resources. And each of these localities have their particular and special interest in this question, a far deeper question than the waters or the forests or the game, within the limits of the blue lines of the Adirondack and Catskill Parks. Now, I believe this Convention should adopt the commission of nine for the conservation of our natural resources, as by this means the entire interest of the State will be best served. Fifteen out of the seventeen members of the Committee on Conservation expressed by their votes in committee that they were in favor of such a commission. There were two who did not agree, and these two have spoken on the floor of this Convention. I believe there is a very great difference between what is called political or partisan or party control, and an interest in political or governmental questions. All good citizens are or should be politicians, that is, interested in politics. There is nothing in the world that is to be deplored in such activity, but it is partisan, selfish influence which has seemed to affect the administration of the Conservation Commission in years past, and it is this which I believe we should attempt to cure, and that I believe will be cured by this non-paid commission of nine.

Mr. Parsons — Mr. Chairman, a number of instances have been given of precedents for the appointment of a nine-headed commission, and they are precedents which relate to the State service. There is a precedent in the national service to which I wish to call attention, and that is the board of twelve commissioners which has charge of the National Home for Disabled Volunteer Soldiers. These twelve commissioners are selected each one to serve twelve years, or until his successor is selected. They have charge of branches all over the country. I am sorry that Delegate Wadsworth from Livingston is not here, because he could tell of the great satisfaction given by that commission. For a great many years he has been a member of that board, and I know in contrasting the work which it has done with the work done in

the State, he has repeatedly pointed out how effective this board of twelve has been, each one serving for six years, which leads to continuity of service, and each one a man interested in the work, and willing to serve without pay,—because they receive no compensation for their service. The result is that you get men whose hearts are in the work, who are with it long enough so that they thoroughly understand it, and their policy is continued, and I believe we can point to that as one of the precedents for this law.

Mr. Clinton — Mr. Chairman, it may be interesting to run over somewhat hurriedly the history of the authorities that have had in charge conservation in this State under conditions which subjected their selection to partisan motives, in connection with a short resume as may be necessary to illuminate the subject of the history of conservation in the State of New York. I wish the delegates present to keep in mind that we are talking of conservation which is State-wide in its operation, and which covers not one subject, but several; that we are not talking merely of the appointment of a governing body for the Adirondack preserve and the Catskill preserve. The remarks of Mr. Whipple are based, evidently, upon his views of what ought to be done in the case of the Adirondacks. Nothing else. Now, the first real agitation in this State, looking to the conditions which have since sprung up, was in 1872. At that time the question was as to the necessity of the State resuming title for the protection of its citizens to lands which the State had frittered away, particularly of the watersheds. By Chapter 848 of that year a commission of State parks was appointed. The commissioners were Horatio Seymour, Patrick H. Agan, William B. Taylor, George H. Raynor, William A. Wheeler, Verplanck Colvin and Franklin B. Hough. They had no duties whatever to perform except to investigate the subject and report with recommendations, which they did, their report being in the line of the resumption of the title to the lands necessary to protect the watersheds. When I say the resumption, I don't mean attacking the titles which have been passed by the State, but to secure the control of forests in those watersheds. I would say that nothing came of that. At that time the great importance of preserving and regulating the flow of stream was not understood, was not appreciated by the people; neither was it, I believe, even talked of, that the level of the underground waters must be preserved to foster agriculture; so that nothing was done until 1884, when the Legislature passed an act which authorized the State Comptroller to employ experts and report a system of forest preservation. Professor Charles S. Sargent, D. Willis James, William A. Poucher and Edward M. Shepard, all men of eminence in their day, and particularly in the line of scientific

investigation of this question. Let me call attention to what that Committee reported on this subject of the constitution of a governing body to take charge of the lands of the State and of the question of the conservation as immediately connected with the watershed. They said, on the general subject of administration, "The management of the public forests must be sheltered from the effects of political change, so far as it is practicable to do so, if the State desires to obtain the best results from its ownership. The care and improvement of forest property in order to be effective should be based on some well-considered system requiring in its development a long series of years and demanding an administration of thoroughly trained, skillful and enthusiastic officials." Mark the words, "care and management of forest property in order to be effective should be based on some well-considered system requiring in its development a long series of years," in connection with the report; the dominating body should be taken as far as possible, in order to carry out that policy. The commissioners also reported that in their opinion the forest management should be vested in a nonpolitical commission to be appointed by the Comptroller for long terms, who should serve without compensation. With the exception of the vesting of the power of appointing such a commission in the Comptroller, that report embodies just the spirit that animated this Committee when it reported in favor of the nine-headed commission.

Instead of adopting that statesmanlike suggestion, the Legislature in 1885 created a forest commission by Chapter 283, in which they appointed three commissioners, who took little or no interest, because the right men had not been selected in the matter, and in 1895 they were legislated out of office, and a commission known as the Fisheries, Game and Forest Commission was created. That commission consisted of five members, with the same result. I can give you the names if you want them. In 1897 they went out. Now, here is where the part of politics is coming in. In 1897 they went out and a forest governing board was created with power to acquire lands for the Adirondack Park. The members of the board were Timothy L. Woodruff, Charles H. Babcock and Campbell W. Adams. The powers of that commission were increased in 1899, and they were authorized to acquire land in Catskill Park. In 1900 the name of the Commission was changed to the Forest, Fish and Game Commission. In 1901 the Commission was reduced from five to three. Why, no one knows. In 1903 the Commission became single-headed, D. C. Middleton being appointed Commissioner in 1905. Only two years afterwards, out went Middleton and in came Whipple. There is the continuity of policy. There are more politics. Mr. Whipple,

whose good work in arousing public sentiment I do not question, remained in office five years only, when he resigned — that is correct, Mr. Whipple, is it not?

Mr. Whipple — Yes.

Mr. Clinton — And Mr. Austin, our most excellent delegate, was appointed. There you have the continuity and the mixing in of politics. The continuity which was advised by the Commissioners in 1884 by the appointment of a commission, non-political, on the basis of years, being required for proper work, and a continuity of policy to develop the idea which of late years has been called conservation. In 1911 Mr. Austin went out of office, January first, and Mr. Thomas M. Osborne was appointed — more continuity of policy. Mr. Osborne held office until May, 1911, when James W. Fleming was appointed commissioner. Well, Fleming remained in office a long while; he remained in office from May, 1911, as a single commissioner, until August, 1911. A beautiful chance to develop the resources of the State through a continuing and a developing policy! In August, 1911, the Commission became three-headed — just why it became three-headed, I do not know, but it was — Van Kernen, Moore, and Fleming. In order that there might be this great development of the policy of the State and of our forests and of our natural resources recommended by the Commission of 1884, Mr. Fleming went out and Mr. McCabe was substituted! Well, that Commission then consisted of Van Kernen, Moore and McCabe. Now, in order that that Commission might have the opportunity to study these questions of conservation thoroughly, they all went out in 1915 and the present commissioner, Mr. Pratt, came in. These men, except the commissioners appointed to investigate, were all appointed and were paid and subject to partisan considerations. Now, that is what we want to avoid, the very thing we want to avoid, and for that reason we ask the approval of this Committee of the plan of having a commission appointed in such a way that there will be continuity of experience, continuity of knowledge, continuity of policy, that, through the coming years, shall be able to give the people of this State a knowledge of their resources which will enable them, the people, to reap the greatest benefits possible from them. And we have provided, for that purpose, that the department shall consist of nine commissioners, to serve without compensation, to be appointed by the Governor for terms which will expire in nine successive years, the first ending in January, 1917, and their successors to be appointed for terms of nine years, vacancies to be filled for the unexpired term. You then have a continuing commission. I am not speaking now on the entire section because part of the section is subject to amendment and probably

will be amended, but I am speaking simply of the composition of the commission which is to govern. What have we had practically? An awakening of the people sufficient to take lands in the Adirondacks and the Catskills on tax sales and to purchase certain other lands, and the whole subject of conservation practically has been limited to that, with all due respect for the knowledge and ability of my friend, Mr. Whipple, and I think he would make a good commissioner on that board. I do not believe that we will ever arrive at anything practical, at anything scientific in results, so long as the Commission is subject to change for partisan or other reasons every two years, and often every year. That is the object of this. Now, let me say this: Mr. Whipple's argument is based upon the idea, apparently, that men cannot be selected to act upon a commission like this who will devote all the necessary time and attention to the performance of their duties. He says that the experience of all humanity shows that this is so. I have not myself the presumption to make a contrary assertion, because I do not believe that the entire experience of humanity is included within the scope of my limited knowledge. Let us see what the policy of the State has been. Let us remember that this Commission is not a commission to perform executive duties. Such administrative duties as it is to perform are only those that are ancillary and necessary for the performance of the higher duties. The study of conservation questions, the application of them so far as possible, the opening up of the paths for further control through conservation of our natural resources, and the custody and protection of some of the property of the State, are among their duties. The policy of this State has always been, and particularly in cases like that, to appoint commissions. They have worked well. I have the Red Book before me. I find that we have a State park at Fire Island. I find that it is and has been conducted by a commission. I find that the State reservation at Niagara has been and is conducted by a commission. I wish to say in regard to the Niagara Commission — the statement has been that these are in local places, but the commissioners come from local places — that the commissioners of the State reservation at Niagara have done a work and secured results, and held the confidence of the Legislatures succeeding each other in the State of New York, that no single-headed commission ever could subject to removal from time to time. There has been a continuity of policy there which has developed that magnificent reservation: and, not only that — I know it personally from my service upon the International Waterways Commission and the investigations which I had to make in connection with that — they have done more to save the waters of the Niagara river as they pass over the

great falls for the use of the people of the State than ever has been done or ever could have been done by a political, single-headed commission. The Palisades Interstate Park has been spoken of. Now comes the State Reservation at Saratoga. Where is my friend Brackett? I am going to give a little praise and I thought it would please him. Mr. Whipple has spoken of these commissions only working successfully where they were local. Every body of land, whether it is a park or a forest, is in that sense local. The strength of his argument, if there be any strength in it, was in the assertion that the people coming from different parts of the State could not and would not — and he came very near, I think, saying “should not,” but he didn’t — devote the attention to their duties that a proper exercise of their functions in the performance of the work allotted to them would require. Now, let us see. Recently one of the most excellent men who was on that commission has died and is now honored for his work at Saratoga. The present commissioners are Frank N. Godfrey, of Olean; George Foster Peabody, of Lake George; and Benjamin F. Tracy, of New York city. Those men are carrying on a work which is wonderful and if those of you who did not go with us to Saratoga Springs will only go there and look over that reservation and study the work they have accomplished, you will see that they were just as well equipped mentally by their intelligence, their knowledge actually existing when appointed, or asquired, as any man in the State to perform their duties, and the test is the consequences. There are others. The Watkins Glen Reservation is another illustration. That has been the policy of the State and it is the proper policy where it involves the study of questions like those involved in conservation and the custody and management of State property. I am not one of those who favor commissions at all, when it comes to the performance of executive duties. There the idea is the centering of responsibility. Now, there is always a danger, with the best and most intelligent of Governors — I am not referring to our present Governor, nor to the next Governor, whether he be Democrat or Republican, because I have in mind the coming years that are necessary to cover this problem — may make a mistake in the selection of a commissioner or commissioners. They may get a man who is not willing to devote his time, who does not perform his duties or who has not the capacity to grasp the importance of the subjects upon which he acts, and so we put in a provision that the Governor may remove him. Now, as to Mr. Whipple’s suggestion that it is a political plum. It is not a political plum because, as suggested by Delegate Meigs, the remuneration, the pay, is eliminated. That is the essence of the political plum, the meat and kernel of it. There may be politics in it to the extent of appointing Republicans or Democrats,

but the main thing is to get the right men, and I do not care, if that is done, whether they are Democrats or Republicans. Any Governor who is to have the selection of commissioners, if this passes, will have before him the fact that he is selecting men whose duty it will be to protect and to promote one of the greatest, if not the greatest, interests to-day, at least so far as it affects the physical conditions and the prosperity of our people; and he will, I believe, not think for one moment of the support he is going to have politically from the men he appoints. He will know that the eyes of the people of the State are upon him. He knows that he will be dealing with a question that the people of the State will not look at from a political point of view. Now, Mr. Chairman, there are other questions connected with this form of government that we have suggested. The restrictions in the present Constitution are rigid. The majority of the Committee did not believe that it was wise to extend them far beyond certain limits. Our fear was that of commercializing the Adirondacks and the Catskills or opening the door to it. But we did have in mind that at some time, in order to have a complete and perfect development of the forests upon our watersheds, it would be necessary to go farther. Most of us thought the time was premature. Now, the idea that actuated us was this: if we can get a commission that will be continuing, that will study the subject, whose policy will not change from year to year or from hour to hour as the mind of man changes, who will not be influenced by the pressure of partisan politics, the whole subject of conservation in this State will receive that attention and investigation which will lead the people finally, after the policy is fixed and adopted, to a further and better conduct of our parks, for the accomplishment of that which we all look for.

Mr. Quigg — Mr. Chairman, I am going to support the Committee on this proposition of nine commissioners and I entirely agree with Mr. Clinton that if you take out salaries there is no politics. Using the word "politics" the way we are using it here, I never saw it dissociated from a salary. I believe that it is merely a question of the integrity of the Governor that appoints. If he uses these places as ribbons to stick in men's coats, then we will not get what we ought to have out of it. If he will take men that love the outdoors and that know what they mean to the indoors, who know what conservation means to the people in the tenements of New York and who really love the outdoors, then it is the best scheme possible; and we have got to leave it to some human agency, and where is there one except the Governor? But I would like to ask the attention of Mr. Clinton and Mr. Marshall to this sentence which begins at the bottom of the first page

and goes on: "One commissioner shall reside in each judicial district." Did the Committee mean to keep him there or simply that he should be there?

The Chairman — Will Mr. Marshall take the floor to answer the question of the gentleman from Columbia?

Mr. Marshall — My answer is that, theoretically, he would remain there, but if he were appointed from a district he would not be disqualified if, for instance, he moved from New York to Brooklyn, which would be moving from the First judicial district to the Second. I do not think that the question is seriously considered, but that would be my interpretation.

Mr. Quigg — Mr. Chairman, I respectfully suggest that the words might better be changed a little there because it would seem as though it followed from his failure to reside in the judicial district from which he was appointed that he would cease to hold office, from that precise phraseology. That was the point that I got up to call attention to.

Mr. Marshall — You might say "appointed from."

Mr. Quigg — I would suggest to strike out the word "One" —

Mr. Marshall — It might be "One commissioner shall be appointed from each judicial district."

Mr. Quigg — Yes, that would do it. I move that the words "reside in" be stricken out and the words "be appointed from" be substituted, line 1, page 2.

The Chairman — Mr. Quigg asks unanimous consent that his amendment be considered. Is there any objection?

Mr. F. L. Young — I should prefer the wording "shall reside at the time of his appointment."

The Chairman — Is there objection to the present consideration of the proposed amendment? If not, we will take it at this moment.

Mr. Clinton — Mr. Chairman, it is suggested that the Committee on Revision can take care of that.

Mr. Quigg — It hardly could, Mr. Clinton, if it is the purpose of the Committee of the Whole that a man shall stay in his district.

Mr. Clinton — I mean if your amendment is adopted, then the suggestion made by the delegate can be taken up.

Mr. Marshall — I second the motion of Mr. Quigg.

Mr. Stowell — Mr. Chairman, I object to the consideration of this amendment until after the disposition of the amendment of Mr. Whipple.

The Chairman — On Mr. Stowell's objecting the Chair suggests that we proceed as soon as we may to vote upon the principal question raised by Mr. Whipple's amendment. There are

probably going to be a dozen or two dozen amendments and the only way we can proceed intelligently will be to take the amendments up one by one. The amendment now before the House is Mr. Whipple's amendment.

Mr. Marshall — It was not my intention to discuss the matter now under consideration but I cannot resist the challenge of Mr. Whipple who seemed to charge me with the gross crime of inconsistency, and I therefore feel warranted in adding a few words to the remarks that have been made by Mr. Clinton, who has very thoroughly indicated the line of reasoning pursued by the Committee. It is entirely true that when the Committee first considered the question of administration it was my idea that those in charge of the performance of the duties prescribed in Section 1 of the Proposed Amendment should be paid commissioners. I favored three commissioners. I was, however, totally opposed to the idea of lodging these great powers in a single commissioner and I contended against that proposition with all of the vigor at my disposal. I felt that as between the several plans that were propounded, it would be far better to have an unpaid commission of nine than one single paid commissioner who would be monarch of all he surveyed. I had in mind some of the experiences of the State in granting large powers to a single official, particularly the Superintendent of Public Works, and I remembered some of the unpleasant experiences of the State in respect to that department of government. I do not desire to resurrect the dead. I would rather prefer to "let the dead past bury its dead" and those who are acquainted with public history are well aware of the fact that there have been numerous occasions in our experience when it was discovered to be a gross error to impose upon a single official such great powers as are created by this article which we are seeking to have included in the Constitution. Now I have the greatest respect for the individual opinions of Mr. Whipple and Mr. Austin. I know that they are thoroughly familiar with the Adirondack forests and that they have done much to improve the conditions in the forests and to educate the public with regard to them. Yet we are now at a period in our State history when we must consider the subject of the natural resources of the State, not in sections, not segregated, but as an entirety, as one thing, having various subordinate interests, subordinate departments. The forests are all-important. Without them our water supply would be diminished and possibly dried up. Without the forests and the waters our game and fish would soon disappear and without them all of our great industries might languish. It is therefore the idea of the committee which has proposed this measure that

a department be created which shall deal with this subject in all of its phases as an entirety, deal with it in such a manner as to give to the State the benefit of intensive study by unprejudiced minds, representing the different sections of the State. I had thought that perhaps three commissioners might suffice but when I found in the committee that the great majority of its members were of the opinion that it would be a mistake to have these powers in the hands of a single, paid commissioner, or of three paid commissioners, and that it would be best to have a commission of nine, I did not think that I was justified in setting up my individual opinion against the good judgment of a majority of the earnest, thinking men who had for three months or longer given study to this subject. I therefore feel that it is my duty to stand by the report of this committee loyally and to sustain the conclusions which it has reached in regard to the matter of administration. And there is much to be said in favor of this idea. As Mr. Quigg has pointed out, if you appoint men to perform functions such as are to be vested in this commission and do not make the office a paid office, there will be very little politics in the department, just as there is not likely to be a scrambling after an office which has but small compensation attached to it, or which is an honorary office. And we have before us example after example of commissions appointed to perform a State duty where the men who have been designated received no compensation except the consciousness of performing a State duty, and where we find excellent service rendered to the State. We have had illustration after illustration presented and I cannot but feel that the classic illustration of the State Board of Regents is as excellent a one as can possibly be suggested. With the State Board of Regents, as here, the commissioners are appointed, or the members of the Board are appointed from different judicial districts, except that they have three at large. There, as here, there is no compensation. There, the men who have been appointed are men who stand high in their communities. There, as here, the term of office is long. There, as here, there is an assurance of continuity of policy. There, as here, it is impossible to have any one political party in continual control, or in sole control, to be more accurate. And we find, in respect to the Board of Regents that the men who are on that Board attend the meetings of the Board with great diligence. Except in cases of illness, there is rarely an absentee at the meetings of the Board, and they are constantly giving intensive study to the subject of education. Now here we have a commission to deal with a number of inter-related subjects, the consideration of which requires a long and careful investigation. Naturally, these commissioners

will not be able to perform ministerial functions. All that they could be expected to do would be to act in an advisory capacity and lay down the policy of the department, and to see to it that the superintendent whom they appoint, with whom they are in constant touch, will carry out those policies. If they fail to do so, they are subject to removal, as the superintendent whom they appoint is subject to removal by them, he constantly being under their observation and direction. But what have they to do? They are not merely to look after the Adirondack Forest or the Catskill Forest but they are to be charged with the duty of developing and protecting the natural resources of the State, taking them as one unit; and the encouragement of forestry and the suppression of forest fires throughout the State, that is, to build up the wood lots throughout the State. There are millions of acres now in the State of New York which are waste lands and which cannot ever be made arable. It is to take under their wing these nonarable lands and to encourage the forestation of those lands and to take care of the dread enemy of the forest, the fires which so frequently occur and which are so destructive in their action. Then they are also to have the control of conservation, prevention of pollution and the regulations of the waters of the State; the exclusive care, maintenance and administration of the forest preserve, the protection and propagation of its fish, birds, game, shellfish and crustacea, and to exercise such additional powers as from time to time may be conferred by law. They are charged with these general duties. In carrying them out they must have agencies which they appoint, a superintendent and such deputies and subordinates as are necessary to carry into effect the general policy. As between one commissioner and a commission of high-minded men, men who would not accept an appointment to such a board except from motives of patriotism, I would unhesitatingly cast my vote in favor of an unpaid commission of nine, expressing my approval, rather than in favor of a single-headed commission.

Mr. Landreth — I had the honor to sign one of the minority reports coming from this Committee and I had not intended to speak on this section of the bill, inasmuch as my colleagues on this minority report had already spoken, but inasmuch as anything I say now may be construed into an assumed antagonism to the section, I desire to say that I am heartily in support of the section with the exception of the minor changes which have been suggested. I want to point out the wide variety of topics which are covered by this commission. We have here not simply the forests of the Adirondacks. The majority of the attention of Mr. Whipple was given to that subject — the Adirondack forests — and nearly all

of his remarks in regard to that I should feel thoroughly able to endorse, but when I recall that that is only one, and I do not assert the most important, of the functions of this proposed commission, I cannot feel that his remarks pertinent to that subject would apply evenly well to the entire field of conservation. Now let us see the topics which are to be covered by this proposed new field of conservation. We have forestry; that does not mean simply a few State parks or the forest preserve. It means forestry in its entirety, and means particularly the question of the reforestation of the waste, private lands of the State. The census of this year—and these figures were given in part by Mr. Smith—shows that in about 22,000 acres of agricultural land, 14,000 are in use. I should have said 22,000,000 acres of agricultural land of which about 14,000,000 are in use, leaving 7,000,000 and some odd thousand acres of waste land. From entirely independent sources I know that that figure is not far from correct, and that the number of acres is increasing. Now it has increased largely for the reason that Mr. Smith, this morning, pointed out, and it is true that there is this large area of land which is of no value for arable, agricultural purposes, but which is peculiarly available for reforestation. The entire holdings in the Adirondack park amount to only 1,800,000 acres, or about one-fourth of the amount of private land in the State, so that that subject itself, private reforestation, is many times the importance of our State forests in the Adirondacks. Next to that comes the question of fisheries, and I do not need to tell you the importance of that, not as a question of sport alone, but as a question of industry, a question of great business investments and undertakings, and we have simply come to the edge of the possibilities of the fisheries. It has been said that an acre of water could be made as fertile as an acre of land in food production, and some near approach certainly is available. Then comes the question of game, which is largely a matter of sport, although not entirely. Then we come to the matter of water storage, a question which has almost limitless possibilities. Following that is the question of river improvement. Our Legislature for the past several years has made a number of appropriations for improvement of the rivers of the State, particularly for the purpose of flood prevention and for purposes of drainage. We have also the question of stream pollution vested in this new commission. This morning it was said that that encroached upon the functions of the Department of Health. I wish to point out that the Health Law gives to the State Commissioner of Health the right to frame regulations for the protection of streams where they affect potable water supplies. It is hardly necessary to say that that is only one of several elements of stream pollution. Our old riparian idea of waters, which is firmly engrafted on the New

York State system, includes in the riparian use of water, not only the quantity but the quality. A riparian owner is entitled to have the stream flow past his land unimpaired in quantity, and in quality. It is a question of law, a question of property; it is not a question of health alone. The State Commissioner of Health has jurisdiction over all the health of the State, but the property side is entirely unprovided for. I am inclined to think that when the proper system of administration is provided, it can be handled by one single department of the State which should include not only property interests but health interests. Then we have the question of drainage. According to the report issued by Mr. George Rafter in "Hydrology of the State of New York", issued as a State bulletin in 1905, Mr. Rafter says that in the different swamps of the State we have an aggregate of 243,000 acres of land. Now that land is not to be compared with the waste lands of the forests. It is not to be compared with the non-arable, non-usable, non-fertile land. It is the land of the highest potentiality in the State. Our experience at a number of points in the State has shown, where we have successfully developed an improvement of our wet lands, we have provided some of the most fertile lands of the State, lands which not infrequently sell for \$500 per acre. At present those lands are held at from two to five dollars per acre, and five dollars will probably be a high average for the value of those lands. If they can be increased in value from \$5 to even \$75 per acre, see what an immense possibility opens up before us. Then comes the question of mineral deposits, which we are only beginning to see the possibility of. The recent development in non-metallic minerals of this State has been remarkable. There are a number of directions in which that development can be directed and supervised in a way to yield large benefits not only to the parties who have invested in those but also to the public interest of the State. Water power is a question in which this State is supreme. New York has already developed — although we have only developed a portion of the possible streams, we already stand at the head of all the states in the quantity of water power developed, and the amount undeveloped is still greater, and it runs up to at least a million and a half horse power of total possible development, exclusive of the development at Niagara. Now with all those questions, Mr. Chairman, it ought to be pertinent, it ought to be evident, that no one man can bring to bear on all those questions that breadth of judgment, that variety of familiarity, that fertility of ideas which come from the consensus of thought of several minds. In other words, as Mr. Marshall has pointed out, that is a question of deliberation, a question of judicial discussion, and of legislation, to some extent. It needs, therefore, a variety of judgment, and to that extent, we have it in this variety of minds

selected from different parts of the State, selected by different Governors and therefore not likely to be biased in any one particular direction.

The Chairman — There is too much confusion in the room. The delegates will please take their seats.

Mr. Landreth — While speaking on that point, I would like to call the attention to one point in Mr. Whipple's address in which he said that, as Governor, he should much prefer to appoint nine men than to appoint one and thought his political position would thereby be nine times as strong. He thought that appointing a board of nine members would only take us deeper into politics, but do not forget after that one Governor is but to appoint two men unless the term of the Governor is extended, and at all times there will be a majority of the men in that commission who are independent of that particular Governor, so that instead of getting deeper into politics we shall be part of the way out of it. We cannot get away from the fact that any activity like the one proposed for this commission consists of two entirely distinct classes of functions; first comes the function of discussion and deliberation, viewing the subject from different points, bringing out the different aspects, different ideas, rubbing up against one another and bringing out ideas, having them tread on and turned over, and that is likely to bring out a great deal that does not occur to any one man. No one man ever had the fertility of thought of nine men in that regard. Now, after those functions are performed and the policy is adopted and the principles are established and regulations laid down, then comes an entirely different and separate group of duties, and they are executive. Now, just as in the case of deliberative functions we need several minds, in the executive field we need but one mind. One executive is better than two. I think it was Napoleon who said that one poor leader is better than two good leaders, and here, in this bill we have provided for just that division of functions. The commission of nine members is to give its attention to deliberation and discussion and bringing together many views. On the contrary, the executive must necessarily be a man who is vested with power. What power? Power which comes from the commission above him. So I think we have covered in this measure this important distinction between these two classes of functions. Let us see how our proposal compares with what business men recognize. What is our present policy as to corporations? Why, the stockholders meet once a year and appoint their directors. We may compare the stockholders to the people of the State. They appoint their directors. The directors may be represented by this Convention. What do the board of directors do? They meet regularly once a week or once a month. What do they do when

they meet? They adopt the policy. They adopt plans. They provide for undertakings. And then they put their functions in the hands of their general manager or invest their president with executive functions. We have done just the same thing. What has been successful in the case of every bank, of every manufacturing corporation, of every non-stock corporation, is a pretty good policy, we believe, for this undertaking which is proposed for the conservation of the resources of the State.

The Chairman — The question now arises on the motion of Mr. Whipple, which the Clerk will read.

The Secretary — By Mr. Whipple, strike out all of section one down to and including the word "heard" on page two, line three, and insert the following:

Section 1. The Department of Conservation shall consist of a single commissioner appointed by the Governor and subject to removal by him on charges and an opportunity to be heard. The commissioner's term of office shall be six years. His compensation shall be fixed by law. He shall appoint and may at pleasure remove a deputy commissioner. He may also appoint all necessary subordinates.

Page 2, line 15, strike out the word "The" and strike out lines 16, 17, and all of line 18, except the word "The".

The Chairman — Are you ready for the question?

Mr. F. L. Young — That motion should be separated, shouldn't it?

Mr. Whipple — It is separated.

The Chairman — The motion as now read is separated. Are you ready for the question? All those in favor signify by saying Aye, contrary-minded, No. The motion seems to be and is lost. The question now arises upon the motion of the gentleman from Saratoga, Mr. Ostrander.

Mr. Blauvelt — Mr. Chairman, I suggest that the amendment be read.

The Chairman — If the gentleman will yield, the suggestion is made that the amendment be read. It is to strike out on page 2, lines 12, 13 and 14, or so much thereof as contains the following: "with the exclusive power, subject to the veto of the governor, to enact regulations with respect to the taking, possession, sale and transportation thereof".

Mr. Austin — In order that the committee may have before it at the same time my proposed change in this section and in these same lines, which I move to strike out, I ask the Secretary to read this proposal which I shall offer as an amendment immediately after this. In fact, I offer it now, and it can be considered after Mr. Ostrander's is disposed of.

The Secretary — By Mr. Austin, page 2, line 12, strike out the word "exclusive". Page 2, line 14, after the word "thereof", insert "which shall have the force of law when filed in the office of the Department of State and published as the Legislature shall provide until and unless the Legislature shall thereafter modify such regulation."

The Chairman — Does the gentleman from Saratoga accept the amendment offered by Mr. Austin?

Mr. Ostrander — I think not, Mr. Chairman.

Mr. Baldwin — Mr. Chairman, I wish to direct my remarks to this rather peculiar power that is given to a commission, the "exclusive power, subject to the veto of the governor, to enact regulations with respect to the taking, possession, sale and transportation thereof", which refers to game and fish. Being responsible for an amendment that was introduced into this Convention which embodied that same idea, I have been asked by the Committee to explain its provisions and what is the object which the Committee designed to accomplish by the introduction of these lines in Section 1. The taking of fish and game, of course, must be governed by legislation, and as long as the legislative power is vested in a Senate and in an Assembly, and the Assembly changes once a year, each year probably a majority of the members of the lower house come here without any previous knowledge of what has occupied the attention of the members during the preceding session of the Legislature; and when a bill comes in to regulate the length of suckers which may be taken in Canaseraga, or whether the mud turtle season shall be extended, or the number of lines and hooks that can be used on any one set line, and how many set lines a single man may have, they pay little attention to it, because they know nothing about it. Then, too, in every locality — there are in every locality special interests. There are some creeks where the perch do not grow quite so large as they do in Niagara river and there are reasons why there should be an exception with regard to taking perch in this particular stream. For nine years there has been a bill introduced into the Legislature, coming from the county of Sullivan, to authorize the taking of pickerel out of White lake during the winter season. Every one of these is an exception. Every one relates to the question of taking game. Every one comes under the head of conservation, and it is a dignified matter with which our Legislature must deal. Sixty-nine bills a year on the average for the last three years have been before our Senate and Assembly to determine these momentous questions, and they vary all the way from how they shall take eels in Sacandaga, and how mallards, and when swans shall be taken, and conditions under which rabbits may be taken, and snipe, and sandpipers and curlews, and even down to the open season for the

catching of bullfrogs. Now, this bill was introduced into this Convention at the request of a number of fish and game protective associations composed of sportsmen who for the last ten years have been compelled at their own expense, in order to protect the game and fish of this State, to maintain representatives at Albany constantly to watch these bills introduced and which, unless attention is paid to them and focused upon them, might become lost and destroy some of the good work that has been done by those associations in the years that are past. Now it does seem as though the sovereign people of the State could delegate this power, great as it is, to some one besides a Legislature which costs a lot of money to run and to do that put it in a commission who would have some definite policy with regard to all of these matters. That is what this bill provides, and it seems to be such a matter that no great interest of the State will suffer if we give to nine commissioners, or one, for that matter, it matters not to me, the power to determine the rules and regulations relating to the protection of our fish and game and when and where it might be taken. Now, my good friend from Saratoga entertained us very well in speaking of the discretion which was lodged in this conservation commission. He is mistaken. It is not vested there at all. It is vested in the Legislature of the State of New York and the Legislature of the State of New York has provided by law when rabbits can be taken, and it has provided they can only be killed when taken *in flagrante delicto*, and it is the Legislature and not the conservation commission that determined the criminality of the thread with a bent pin that was put into the water in the lake of Champlain by the two little girls—it was the Legislature that enacted that in its wise discretion. Take it away from the Legislature and give it to some one who can have an elastic system and govern the State and protect the fish and game and render it unnecessary that there should be a useless waste of money year after year in considering the identical bill by the Legislatures from people who for some selfish interest wish to encroach on some stream for their own pleasure. Now, gentlemen, that is all there is to this measure. That is all that it is designed for, and I think it should stand.

Mr. Ostrander — We must remember the philosophy of that old fellow who said, "You might not want any whiskey in forty years, but when you did want it you would want it damn bad." I don't believe in the principle of putting it out of the power of the Legislature to have authority over some subject, even over the regulation of when and how you catch game. I think the people ought to have that power and that if you want to try the experiment on the dog of letting the Legislature give that power from time to time, I shall not have much objection. But to put it into the Constitution, I think it is very bad practice.

The Chairman — The question will be on the motion of Mr. Ostrander. After that if that motion happens to be lost, Mr. Austin's motion will be put, which refers to the same subject. The Secretary will read the motion made by Mr. Ostrander.

The Secretary — By Mr. Ostrander. Section 1: Strike out all of line 12, after the word "with," all of line 13, and the first three words in line 14, including the word "thereof."

The Chairman — The Chair says for the benefit of the Committee that the words of the Committee adopted in its report and which Mr. Ostrander would strike out are "With the exclusive power, subject to the veto of the Governor, to enact regulations with respect to the taking, possession, sale and transportation thereof." All in favor of the motion will signify by saying Aye, contrary No. The motion is lost. The question arises on the motion of Mr. Austin. The Clerk will read.

The Secretary — By Mr. Austin. Page 2, line 12, strike out "exclusive." Page 2, line 14, after the word "thereof" insert "which shall have the force of law when filed in the office of the Department of State and published as the legislators may provide until and unless the Legislature shall thereafter provide such regulations."

Mr. F. L. Young — Mr. Chairman, I think the Secretary made a mistake in saying that the legislators may provide. I think it is the Legislature.

The Secretary — It is "legislators" here.

Mr. Austin — Mr. Chairman, that is a mistake made by the stenographer: It is "the Legislature may provide."

Mr. Marshall — Mr. Chairman, I desire to make an amendment to this Proposed Amendment. After the words which have just been read, there should be a period. I propose a period. They follow the words "the department" and strike out the word "and" immediately after the word "thereof" in line 14, page 2.

Mr. Austin — Mr. Chairman, I accept that suggestion.

The Chairman — Mr. Austin accepts the amendment.

Mr. Marshall — Then it would read, "with the power, subject to the approval of the Governor, to enact regulations with respect to the taking, possession, sale and transportation thereof, which shall have the force of law when filed in the office of the Department of State and published as the Legislature may provide, until and unless the Legislature shall thereafter modify such regulation. The department shall exercise supervisory powers as from time to time may be conferred by law" — it merely breaks the sentence and makes it a little more readable.

The Chairman — Mr. Marshall will leave the draft of his amendment at the desk so that the Secretary may have it.

Gentlemen, are you ready for the question, or do you want it read again? All in favor will signify by saying Aye, contrary No. The motion is carried.

The Chairman — There is one other amendment pending before the Committee at this time which may be disposed of before we take up another amendment, and that is the Proposed Amendment of the gentleman from Columbia, Mr. Quigg, to make some amendment to the first line of page 2. I will ask Mr. Quigg to state what his Proposed Amendment is.

Mr. Quigg — To strike out the words "reside in" and substitute the words "be appointed from", line 1, page 2.

Mr. Austin — Mr. Chairman, I hope this amendment will not prevail. I think it should be explained that if it does prevail it would be perfectly possible for one district of the State to be unrepresented for eight or nine years. The idea suggested by the Committee was to have this Commission represented in all the judicial districts. If this amendment prevails a man might be appointed from one district, move away for eight years, if his term ran that long, and the district would be unrepresented. I think the words should remain as they now are.

The Chairman — Gentlemen, are you ready for the question? All in favor of the motion of the gentleman from Columbia will say Aye, contrary No. The motion is lost.

Mr. Foley — Do I understand it is now in order to offer an additional amendment?

The Chairman — It is.

Mr. Foley — I move to amend page 1, line 7, by inserting after the word "governor" the words "by and with the advice and consent of the Senate", and I do so in the hope that the friends of the proposal on the floor will accept the amendment. It may be said we have been obsessed with the idea of depriving the Legislature of every possible form of power over this new departure of government. You have deprived the Legislature of regulating the fish and game; you have deprived the Legislature of fixing salaries. You have another measure here as to the right of the Legislature to exempt from the regulations of the civil service any employees in the conservation department. Now, the parallel you have used to justify the passage of this proposal is the State University, and the Regents, of course, as we all know, are elected by both houses of the Legislature without the endorsement of the Governor at all. Now, there have been cases in the history of this State where unworthy men have been named by the Governor and rejected by the Senate to justify this amendment, and there are many other cases that might have taken place if the salutary effect of rejection by the Senate had not been inserted in the Constitution. I believe that the plan for the consolidation of State

departments will continue the present scheme of confirmation by the Senate, and I see no reason why there should not be check of Senate control over these men and I hope the amendment may be adopted.

Mr. Westwood — Does he know of any case where the law now provides that the Senate must approve the appointment by the Governor where the officer serves honorarily, without salary?

Mr. Foley — Yes.

Mr. Westwood — Now, do you know of any unworthy candidate named by the Governor who has failed in such a case to receive the approval of the Senate?

Mr. Foley — No, I cannot remember any such case. But the vast interest and scope of the subject within the jurisdiction of this commission justify confirmation. We know there have been abuses in connection with conservation, and if you give the Governor the naming of these men with these tremendous powers without check, you will soon find abuses will occur.

Mr. Baldwin — Mr. Chairman, as a member of the Committee. I will say that I am willing to vote for this amendment. I was not present at the meeting of the Committee when this article was adopted in its final form, and I was quite surprised to see these words omitted. I think this is the first departure made by the State government from the uniform policy providing for confirmation by the Senate. This is an important commission. The vast resources of the State are placed in their hands, and they will have vast sums of money to disburse — at the present time more than half a million a year — and if this article is adopted, there will be additional appropriations for reforestation and for the purchase of additional lands. It seems to me that this is a consistent amendment if we are to follow the policy that this State has had in the past. I can say that, judging from the rumors going about as to what the other committees are to report, the Legislature is to be stripped of all power of confirmation and this is but another endeavor to centralize in one head in this State all the power in the gift of the people, and I shall vote Aye.

Mr. F. L. Young — If Mr. Foley's amendment had been offered previous to the action taken by this Committee on the amendment offered by Mr. Austin, I should have given it my support. In fact, I had intended the same amendment as that offered by Mr. Foley.

Mr. Foley — Mr. Chairman, I attempted to rise several times and be recognized, but I was informed that I would have to wait until the disposition of the amendment —

Mr. Whipple — You misunderstood me. Your Proposed Amendment is without force and effect inasmuch as the Committee

has adopted a Proposed Amendment by Mr. Austin which places the final adoption of these rules and regulations in the hands of the Legislature and not in the hands of this commission.

Mr. Austin — I think there is a further reason why this amendment should not prevail at this time, and that is because we have not yet received the report of the Committee on Governor and Other State Officers. I think the same method of appointment and removal should apply to these commissioners that is applied to the other departments of the State. And if a different method, the approval of the Legislature, is provided by action of the Committee, the same provision should apply to this commission. I think that there should be uniformity as to appointments and as to removal, and this can be made to conform to the general policy on third reading. For that reason I hope this amendment will not prevail.

Mr. Rhees — Mr. Chairman, I may take the liberty of saying that the Committee on Governor and Other State Officers is following the policy as far as practicable of adopting the recommendations of the various committees, and the article that refers to conservation does not provide for appointment by the Governor on the advice and consent of the Senate. It will follow the suggestions of this Committee, the Conservation Committee and the Committee of the Whole.

Mr. Low — Mr. Chairman, it seems to me that there is a question of principle involved in this, which the Convention in Committee of the Whole should bear in mind. When an executive officer is appointed by the Governor, with a term coterminous with his own, I think it is perfectly proper that he should be appointed without confirmation, because the object sought is to center responsibility on the appointing officer. But when the officer is appointed by a Governor with a term longer than his own, as in this case, where the appointments of members of the proposed commission are to last for nine years, I think we ought to adhere to the time-honored custom and have the appointments confirmed by the Senate.

Mr. Angell — As a member of the Committee which reported this, I believe that the amendment suggested by Mr. Foley should prevail. It has been suggested here, I believe by Mr. Clinton, that the only possible danger in connection with the appointment of this commission was in the fact that the Governor might select unworthy men. As a safeguard, if any safeguard is necessary against that contingency, I am in favor of confirmation by the Senate.

Mr. Marshall — I am rather surprised at the suggestion made by Mr. Baldwin that "by and with the advice of the Senate" was

stricken out after those words had appeared in this measure. He may not have said that, but that is the intimation, or at least the interpretation, of his remarks that I gave to them. As a matter of fact, there was no suggestion in the Committee that those words should appear in the Proposed Amendment. The amendment was discussed over and over again and its language was voted upon on several occasions. Nobody ever struck anything out of this measure which bore on the subject of confirmation. It would seem to be the unanimous opinion of the Committee, as far as there was discussion on the subject, and there was some on the general method of appointment, that it was desirable that there should be confirmation by the Senate. On the contrary, it seemed to be the belief of the Committee that there would be given an opportunity to log-rolling and for bargaining, which would bring politics into the subject — and it was desired to keep out politics — if there were a provision in regard to confirmation. In view of the fact that the offices were to be honorary, it was thought best to give the appointing power to the Governor, especially as there was to be a vacancy, one every year, and from time to time the Governors might change in their political views, and in that way there would be opportunity for bringing into the commission men of different shades of politics. The Committee believes, as far as I can speak for the Committee, that the amendment proposed should not be adopted.

Mr. Wagner — I hope the amendment offered by Senator Foley will prevail. I think it is a wise thing to have the Governor, to give the Governor the power of removal, but the power of appointment should be with the advice and consent of the Senate. While these positions are honorary, they are as important and will be as important as any public service in the State government because their jurisdiction and power will be tremendous. We must not have in mind only the forests. What about your water power, an important subject on which there has been so much controversy as to whether private interests should control our water power or the State itself should regulate, and even operate its water power. Important commercial questions will be determined by this Commission and the appointments ought to go through the scrutiny practically of an election, because the scrutiny of the Senate of appointments has been a very healthy and important matter for the people of the State. I have in mind a few nominations sent in during my time in the Senate which were rejected because the men were unqualified and in one case there was an investigation held by the Committee, and it was actually shown that one of the men whose names were sent in was guilty practically of larceny.

Mr. Marshall — Was that an honorary office?

Mr. Wagner — No, but while this office has no compensation, yet it has under its jurisdiction as important functions as there are in the State government, and I have in mind the question of water power which has been before our legislative bodies, in which there have been very serious questions involved of State policy, and I was reminded just now of the Long Saulte charter and matters of that kind which this Commission would be given absolute control over.

Mr. Quigg — Does the gentleman see any particular reason why a thief should be appointed to an honorary office?

Mr. Wagner — No, none that I know of. There would be some question if these appointments were to be coterminous with the office of Governor, but Mayor Low has pointed out the clear distinction which there is in these appointments as distinguished from appointments made coterminous with the Governor. Although, as a matter of fact, the Constitution of 1894 recognized these appointments should be with the advice and consent of the Senate, because the office of superintendent of public works, continued by the Constitution of 1894, provided that the appointment must have the approval of the Senate. If a worthy man is named, there would be no difficulty in securing his confirmation, and if an unworthy man is named there should be some power to reject, and I hope the gentlemen will realize that, while we call this an honorary office, it has under its charge as important matters and problems affecting the financial welfare of the State as any functions in our State government.

Mr. Clinton — Mr. Chairman, may I ask a question? Not in disapproval of what you say, Mr. Wagner, as a matter of fact the Regents of the University are elected by the Legislature?

Mr. Wagner — Yes, and they have elected very good Regents.

Mr. Clinton — I merely asked the question so that it can be considered with the question that there might be log-rolling.

Mr. Wagner — You look over the personnel of the Regents and you will see there has been no log-rolling. The Senate has risen to its duty and elected the most distinguished men of our State interested in education.

Mr. Austin — Mr. Chairman, I only want to say that I can change sides very quickly. A moment ago I said I hoped this amendment would not prevail and now I say I hope it will. At that time, I supposed there would be a uniform proposition brought in by the Committee on Governor and Other State Officers, and I understand there will be a practically uniform recommendation on this subject, and it will be to the effect that in the ordinary case appointments will be made subject to the

advice and consent of the Senate, and that this department only has been left without that provision. I am in favor of providing for confirmation by the Senate. I was not in favor of the motion a few moments ago, because I was not aware of what had been done by the Committee.

Mr. E. N. Smith — For the reason stated by Mr. Austin, and for the further reason that I believe this would be a single exception in the whole scheme of the government of the State, and for the reason that I can see no purpose in exempting this body from confirmation, I hope the motion offered by Mr. Foley will prevail.

The Chairman — Are you ready for the question All in favor will signify by saying Aye, opposed No. The motion is carried.

Mr. McKinney — Mr. Chairman, I desire to offer an amendment to Section 1, which I believe will commend itself to the consideration of the Conservation Committee. My motion is to strike out from line 10, page 2, the word "shellfish", and insert in line 11, page 2, the words "and all shellfish", so that that clause shall read, "the protection and propagation of its fish, birds, game and crustacea, except migratory fish of the sea, and all shellfish within the limits of the marine district." I make this motion, Mr. Chairman, believing that the same reason which induced the Committee to except the migratory fish of the sea should induce the Committee now to except shellfish. It is scarcely necessary to remind the Committee that in shellfish growing, planting, and harvesting, there is a great industry in this State. The shellfish which go to the market are not now the wild products of nature which they might have been and were at one time, but they are as carefully planted, seeded, cultivated, and harvested as the crops on the farm. It appeared to the Committee in making its final draft that the migratory fish of the sea were not properly subject to the conservation laws of the State. They were hardly to be considered State property. Sometimes they were within the waters of the State; sometimes they were out of them, and men caught them and used them for food as they could, but there was very little, if anything, that the State could do to preserve the migratory fish of the sea. Therefore, as Mr. Marshall said this morning, in considering that clause, that class of fish was excepted because the catching of them was an "industry," and it was not the purpose of this section of the Constitution to regulate industries. Now, if the migratory fish of the sea, if the business of catching and marketing the migratory fish of the sea is an industry and should be excepted from this provision, how much more so is the cultivation of the shellfish in the waters of the State. There is an industry which engages

millions of dollars' worth of capital, employs thousands of men and is not properly subject, as I said, to the conservation of the State. Mr. Chairman, are we going to subject this one industry, this single important industry to a governor-named committee to make laws? What is the reason for naming this one industry and for saying it shall not be subject to laws made by the Legislature, but subject to the legislation of a nonpaid board of conservators? There can possibly be no answer to the question, and I believe the Committee must have been under a misapprehension as to what was being done and what would be accomplished when they permitted the word "shellfish" to go in line 10 and designated that single industry for constitutional operation, leaving all the other industries of the State to legislative control. If, in the judgment of the Committee, as I said, the migratory fish of the sea are to be exempted from the operations of this commission, many times more so should the shellfish of the State be excepted, and I hope the amendment will prevail.

Mr. Quigg — Mr. Chairman, I can answer the question of the gentleman from Suffolk. The waters of Great South bay have been so stripped by those people you call representatives of an industry that there are very few oysters or clams there now. You have to go to Long Island and import them to change the breed every year. Unless some attention is paid to it, you won't have an oyster in Great South bay in two years more, unless reminiscent and a broken shell. They need conservation more than any other kind of fish. Now, Mr. Chairman, I want to speak of the other provision because I am going to move to strike out "except migratory fish of the sea within the limits of the marine district". These migratory fish, Mr. Chairman, are black fish, blues, kingfish, sea bass, weak fish, flounders, flukes, and snappers, snappers being young bluefish. Now the fish come into Great South bay in spring and do their breeding. Later they go out, and these industrious persons set pounds alongside the entrances to Great South bay and the exits, and they gather these game fish in by thousands upon thousands as they are going in to breed and as they are coming out again in the fall. That is how it is done and it is a wicked thing to be done. These are the only game fishes, ocean game fishes that we have around New York, and it has got so now that you can hardly get a fish within three miles of the coast. I can say, because I have fished over nearly every square yard of Great South bay, where the current went, and over practically the whole ocean, outside of Long Island, or the border of Long Island, and it has got so you have got to go twenty miles. These pounds have ruined the fishing so you have got to go twenty miles out before you can catch a fish of any kind. You see, this does not affect the real industry. Mr. McKinney has not given

full information about that. The real industries, gentlemen, are in the cods and in the mackerels and in the menhadens. They never come into the bays. They don't bother with the inlets at all. The other fishes come in to feed and come in to breed and these pounds gather them up. If there is anything in this world in the way of conservation of game that meets or needs the concern of this Commission it is the game fish that come in and out of the Great South bay. I hope the gentleman's amendment will not prevail and then I want to offer my own.

Mr. Bannister — I am amazed at this request of Mr. McKinney. The very proposition of this Conservation Commission, one of the principal purposes was to save the shellfish of the State of New York. Justice Blackmar of the Supreme Court of the State of New York just within a few weeks has rendered a decision dealing with the fouling and ruining of the oyster beds near the city of New York, and under that decision it has been held that no action can be brought to prevent such a proposition, and that in the case of Seaman against the City of New York, and under his decision there is no right, no authority to protect the shellfish of New York. It is high time under such circumstances that some commissioner, or some body should have the right to say whether we are to be presented with the proposition of whether the millions of dollars represented in the oyster industry is to be destroyed or not. I am amazed that a man representing such an industry should come before this Convention, and if it is insisted upon, I certainly agree with Brother Quigg upon this proposition.

Mr. Marshall — In adopting the language which is now the subject of criticism the Committee had before it the present Conservation Law which places under the supervision of the present Commission the enforcement of all laws for the protection of fish, shellfish, crustacea, birds, and quadrupeds; lands under water which are surveyed and improved pursuant to law as oyster beds or shellfish grounds, with the power to grant lease of lands under water for shellfish culture, according to law, to make rules regulating the inspection and examination of shellfish, shellfish grounds, and the buildings used for storage, the handling and shipment thereof, the floating of shellfish, regulating their transportation, importation, exportation, and so forth. The only exception found in the statutes are the words which were inserted in the section, which we are now considering at the request of the gentleman from Suffolk county, except as to the migratory fish of the sea, within the limits of the marine district. There was no suggestion on his part that we should except shellfish. It was recognized at that time by him and his associates that shellfish should come within the jurisdiction of the conservation commission.

Mr. McKinney — I beg to enter a denial to that assertion. I want to call Mr. Marshall's attention to the fact that shellfish were not mentioned while I was in the committee room; they may have been after I left.

Mr. Marshall — I will say that the representatives of the fishermen, whoever they were, made no suggestion as to the exception of shellfish. Mr. Pelletreau was there, and I think that he will bear me out in the statement that the only exception that was advocated was the exception which is now contained in the provision which related to the migratory fish of the sea. But whether it was talked about or not, it is evident that it is the policy of the State that shellfish should be considered as a special subject of protection, and we would be derelict in our duty to the State if we did not insist upon the continuance of that policy in this provision which we are now considering. It may be, as a matter of fact, unknown to the members of this Convention that the oyster beds in the vicinity of Long Island are the property of the State, and that the State is in receipt of a revenue from the oyster beds. They are leased and a considerable sum is received annually by the State from the leasing of these beds and which aids in the maintenance of our Conservation Department, and it would be, in my judgment, a step backward if we changed that policy and struck out from this provision the reference to shellfish. Moreover, the present law contained the most explicit provision with respect to the care of oyster beds. Section 313 provides that the sale of shellfish is prohibited unless their sanitary condition be certified. The taking of oysters in South bay is regulated. The pollution of waters where oyster culture takes place is very stringently regulated. There is a prohibition against the allowing of refuse from manufacture, and sewage, or substances injurious to oyster culture, to be allowed to run into the oyster beds of the State, or where oysters are raised. There is a provision in Section 326 against allowing garbage to run into places where oysters are planted. In other words, the public health is in favor of this proposition, probably, more than any other proposition which can come within the jurisdiction of the Conservation Commission. It is the most important of all the subjects which relate to the public health and which have to do with conservation; and I would consider it a most unfortunate thing if this amendment should be adopted. I should rather recommend to the committee the adoption of Mr. Quigg's Proposed Amendment striking out the exception with regard to the migratory fish of the sea, if we are to be met with such a suggestion as that which is now made.

Mr. McKinney — In spite of my feeble efforts, it seems that I did not make my meaning and my purpose plain. It was furthest from my thought, as any one who gives me credit for common sense would know, to suggest that the shellfish industry should be exempt from statutory regulations; and that anyone should think for a moment that a food of that kind should not be subject to very strict health regulations, concerning the marketing of them, and the transportation and the handling of them, does not seem possible. I had not the slightest idea of suggesting that the State surrender its jurisdiction over shellfish and that there be no regulation of that industry. My only suggestion was this, that this section picks out of all the industries of the State, one only for constitutional regulation by a commission which is created a demi-legislature. It takes that one industry out of the protection of the general Legislature to which all other industries may resort. Now, shellfish is not the only article of food which has to be handled carefully and transported carefully and inspected regularly. And yet, I have seen nothing in any amendment offered to this Constitution providing that there should be a constitutional commission authorized to make regulations for the handling, inspection and transportation of that food. Those industries are left to the Legislature as they ought to be left and all I ask is that this one industry, and that the laws relating to it be left to the Legislature and be not left to be made by a sub-legislature, for which this Section 1 provides.

The Chairman — There are two motions before the House. The Committee reported the proposition that the department shall have jurisdiction over "the protection and propagation of its fish, birds, game, shellfish, crustacea, except migratory fish of the sea." The proposed amendment by Mr. McKinney is to include shellfish, take shellfish from the commission and place it in the exception. The question is upon the Proposed Amendment by Mr. McKinney. All in favor signify by saying Aye, contrary No. The motion is lost.

Mr. Quigg — I want to say one more word about these fishes. There is no federal question here, because what I am talking about are these fishes after they come into the Great South bay, and that is where they need regulation. And remember, that I am not talking about whale or porpoises, but I am talking about nice things like blue fish, king fish, sea bass, weak fish. That is what I am talking about. Now, they come in every night, sure, whatever the tide is. They come in on each tide and they go out with each tide, but they come in at night certainly, in order to feed in the marshes. Then they go out the next morning. Now, after they go out and right on our coast, there is no three-mile

limit or any federal question at all and right there they put these pounds. The State should have regulation over them. Certainly, if any gentleman has any doubt as to how he should vote, he can do no harm by giving the power to the Commission in connection with the power that it now exercises.

Mr. Marshall — I would suggest to Mr. Quigg that perhaps the most of his objections could be met by striking out from line 11 after the word "sea" the comma, so it would read "migratory fish of the sea within the limits of the marine district." That would bring them within the South bay.

Mr. Quigg — Just let me get that again.

Mr. Marshall — I would suggest that you merely strike out the comma in line 11 after the word "sea."

Mr. Quigg — Yes, sir, I will be satisfied with that.

Mr. Chairman — What is the motion?

Mr. Quigg — I move to strike out the comma, on line 11, after the word "sea." I move that after the word "sea" in line 11, that the comma be stricken out.

The Chairman — Will the gentleman from Columbia withdraw his former motion?

Mr. Quigg — I withdraw my former motion because I think Mr. Marshall is right.

Mr. Root — I hope this provision will be left in such a form as to accomplish the purpose of Mr. Quigg's motion. There are no fish which require protection to a higher degree than migratory fish for the reasons that Mr. Quigg has stated, and it has been from the very earliest days of American fisheries and Colonial fisheries customary to make rules and regulations for the protection of those fish as well as others. The New England Colonies did it; the British Colonies of the Northeast do it. All the maritime nations of Europe do it, and while we are here providing a new and we hope a more effective agency for the protection of this great food supply, it would be quite unfortunate to take out from the scope of power the migratory fish which constitute the great part of the food supply. There is another reason for striking out the reference to migratory fish and that is that it is exceedingly doubtful whether many fish would be left. Nearly all fish are migratory, to some degree, and if you have a constitutional exception from power I apprehend that this Commission would be much embarrassed in any protection of the fish food supply. I see no reason why they should be excepted. We protect fish, not because we own them. We do not own the fish that are migratory any more than we do the fish that are not. We have jurisdiction over them because they are within our territory, and they become property only when they are reduced to possession. We protect them.

not as property. We protect the opportunity of our people to reduce them to possession by rules and regulations which constrain and bind all persons within our territorial jurisdiction. But that right of regulation applies to all the fish that are within the jurisdiction, whether permanently or for a single minute, because all persons who are within the jurisdiction are subject to the laws of the State. So I hope Mr. Quigg will persist in his motion to strike out the words "except migratory fish of the sea."

Mr. Quigg — I renew my motion, Mr. President, to strike out the word in line 10 "except", the whole of line 11 and the syllable "trict", t-r-i-c-t, in line 12.

The Chairman — Is the Convention ready for the question?

Mr. Pelletreau — I realize, Mr. Chairman, that it is a very bold thing for a humble member of this Convention to attempt to make an argument against the learned President of this Convention. I live on Long Island in the vicinity of the marine district and where a large portion of the inhabitants are engaged in salt water fisheries. The Conservation Department under which department we are considering the introduction of this proposal has no jurisdiction whatever as to the migratory fish of the sea, within the limits of the marine district. The large number of men engaged in this industry do not wish to be hampered, if you please, by game wardens and fish wardens. Their business is not a sport. It is an industry, and one of the most important ones in my section of the State, the supplying of edible salt water fish to the city of New York. Something has been said by the gentleman from Columbia county in reference to the fishing, or fisheries within the Great South bay. That is a very insignificant part or portion of the fisheries on Long Island. The great fisheries on the coast in the vicinity of Montauk Point are to-day one of the principal supplies of edible fish in the city of New York. The fish there are caught in pounds outside of the beach in the ocean. The pounds extend on both sides of Montauk Point, that arm extending out into the sea, some fifteen or twenty miles. As I said, this is an industry, not a sport. Thousands to-day of men are engaged in the salt water fisheries. Many hundreds of thousands of dollars are now invested in that industry. Some of these pounds and fishing apparatuses cost from three to thirty thousand dollars. If that industry is to be subjected to rules and regulations promulgated by a board, it will suffer. The people of the city of New York will suffer. In 1913 the Legislature when it recodified the game laws of the State provided that no fish should be caught within the limits of the State except by angling. Had that law been allowed to remain upon the statute books you could not have bought a pound of fish in the city of New York for less than a dollar a pound. The

fishermen and the interests of the food and fish market which supply the fish in that city came here to the Legislature. The Legislature saw the error which it had made and put in the exception "except as to migratory birds of the sea within the limits of the marine districts". I have in my hand the Conservation Law, a pamphlet published under the direction of the Conservation Department, and I quote from the general powers and duties of the Commission. For twenty years those men engaged in this industry have not been under the Conservation Department. They, of course, are under the jurisdiction of the Legislature and we desire that that condition and position continue. At my home, where I live, at eight o'clock in the evening there is a fish train goes by from Montauk to New York. It is known as the fish train. It is a freight train which carries anywhere from twelve up to forty cars of salt water fish all of which were caught in nets and pounds at Montauk alone. This is a matter of grave importance to the people of my locality. Aside from viewing it in a broad and State sense, viewing it from my own personal comfort, if down in my county, Suffolk, it is learned that the salt water fisheries had been by constitutional provision placed under the Conservation Department, why, I will have the entire salt water fish industry after me with a sharp stick. I won't dare to go home. Now, as this industry has never been included within the jurisdiction of the Conservation Department, I simply ask that it not now be included by constitutional provision.

Mr. F. L. Young — I just want to make a suggestion to the Committee in connection with this section. The term "marine district" was brought to my attention with the fisheries of the Hudson river, and I ascertained to my astonishment that the Federal authorities claimed complete jurisdiction over all questions of fisheries in the Hudson river, that being a tide water, especially within the territory defined by the statutory definition of what is a marine district, and I was informed by the Conservation Department of this State that they did not dare to assert their power as to any fishing in the Hudson river at points south of Verplanck's point. Now, if that is true, we are merely trying to legislate against Federal authority, and our legislation will be wholly inoperative and futile.

Mr. Pelletreau — The present Conservation Department, under Section 280 of the Conservation Law, as it is to-day, has jurisdiction, so far as fisheries go, over the waters of Lakes Erie and Ontario, the Hudson river north of Verplanck's point, and the inland waters of the State, and the rest of the waters of the State are within the jurisdiction of the Federal Government, which exercises that jurisdiction, and does it to-day in my county, and

if the Conservation Department of this State is given the power of rule and regulation, as it is proposed to do by this Convention, then the salt-water fishermen of my county will be placed between two fires — the conflicting rules of the Conservation Department of this State and Federal laws and regulations. The Federal Government already exercises jurisdiction and power within the marine district over salt water edible fish.

Mr. Marshall — Look at Section 300, and you will find the marine district.

Mr. Pelletreau — I read from Section 300 of the Conservation Law of the State: "The marine district shall include all waters in and adjacent to Long Island and all tidal waters of the state, except the Hudson river, north of Verplanck's point," which corroborates my previous statement. I hope this amendment made by Mr. Quigg will not prevail.

Mr. Wickersham — For information, will you tell us to what extent the Federal Government does exercise jurisdiction over these migratory fish in the marine district and in what way it is exercised?

Mr. Pelletreau — I am not familiar enough with the extent of it to give you a full answer, and such an answer as you ought to have, except that I know that inspectors come from Washington, from some department, the Department of Commerce. The department is the Department of Commerce, and there is a bureau called the Bureau of Fisheries. They have vessels and are active in the protection of the salt-water fisheries.

Mr. Whipple — Mr. Chairman, if the gentleman will yield, I will ask the question that I wanted to ask. Has the State, as you understand it, jurisdiction over this territory now for any purposes?

Mr. Pelletreau — None whatever, as I understand it; I mean as to fishing. None whatever, as to salt water migratory fish.

Mr. Whipple — It assumes jurisdiction for certain purposes evidently, because the shellfish people and even your people heretofore have been here on bills that have been introduced in the Legislature many times, and it was in connection with bills which were designed to give State authority and jurisdiction.

Mr. Pelletreau — Not to my knowledge, but I have been informed that was the fact.

Mr. Whipple — What I really was getting at was why you wanted it excepted from the Constitution if the Legislature has the jurisdiction; why you would rather have the Legislature than this department do it?

Mr. Pelletreau — Well, we don't want to run any chance.

Mr. Whipple — I wanted to find out what the point was.

The Chairman — Is the Convention ready for the question?

The Chairman — The question arises on the motion of Mr. Quigg to strike out the exceptions on lines 12, 13, 14. All in favor will signify by saying Aye, contrary minded No. The motion seems to be lost.

Mr. Quigg — Mr. Chairman, I ask for a division.

The Chairman — A division is asked for. All those in favor of the motion will please rise. All those opposed will please rise. The motion is lost. Ayes 26, Noes 43.

Mr. Quigg — I renew my motion to strike out the comma.

The Chairman — Mr. Quigg renews his motion to strike out the comma. All those in favor will please say Aye, contrary-minded No. The motion is carried.

Mr. Wickersham — I move to strike out the paragraph beginning at the end of line 18 to and including line 22 of page 2, which reads: "The Legislature shall not at any time exempt from the regulations of the civil service any employees of the Conservation Department except the superintendent, temporary emergency employees and laborers." Mr. Chairman, it seems to me that that is unnecessary for the purpose of protecting the enforcement of the Civil Service Law and provision of the Constitution, and it may be opened to a serious doubt as to whether or not it creates an exemption which goes beyond the limits of the Civil Service article. I know the clause has been the subject of a good deal of consideration by the Committee and that it was their intention to preserve fully the protection of the Civil Service Law, and yet, with all due deference to them I think they have failed to do it. I don't know whether the Committee on reconsideration is willing to strike that out, or whether they still adhere to it. If they are willing to strike it out, I do not want to vex the ears of the Convention by hearing my argument.

Mr. Marshall — I think you had better continue your argument.

Mr. Wickersham — Now, Mr. Chairman, the provision in the Constitution, contained in Section 9 of Article V, provides: "Appointment and promotions in the civil service of the State, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable by examinations, which, so far as practicable, shall be competitive." I shall not read the exceptions because it has nothing to do with the subject of my remarks. Now therefore, nothing is necessary in this article to protect the employees of this part of the State's agency, because of this civil service provision which requires appointments to be made by the merit system and by examinations, so far as practicable. Therefore, the question for consideration is, what is the effect of the exception contained in this article, it differing from every other article

of the Constitution, creating any other department of the State government, and which excepts the superintendent, temporary, emergency employees and laborers. Now, Mr. Chairman, under the operation of this constitutional provision, the Legislature has empowered the civil service commissions, among other things, to apply the provisions of the law by recognizing an exempt class, and one of the subdivisions of the section defining the exempt class is, in the State's service, all unskilled laborers and such skilled laborers as are not included in the competitive class, or non-competitive class; and in the rules which have been made in carrying out the provisions referred to, in rule fifth, the commission has defined the following positions as included in the exempt class: Subdivision 4 is, "all unskilled laborers and such skilled laborers as are not included in the competitive or the non-competitive class." And then, under the head of rule 13, provision is made for seasonal positions and emergency positions, and the third subdivision deals with the emergency positions, and it is that: "When an emergency requires that a position subject to non-competitive examination shall be filled immediately the appointing officer may select any person available to fill the vacancy and if he forthwith notifies the Commission of such action and within five days nominates a person for non-competitive examination for the vacancy, the account for salary will be certified up to the date when such examination has been held and the appointing officer is advised of the result"; and the fourth division that "when an emergency requires that a position in the competitive class be filled before an appointment can be made from the eligible lists the appointing officer shall first request a certification, after which he may fill the vacancy without examination, reporting the name of the appointee forthwith to the commission, and the salary account will be certified until such time as an appointment is made from the eligible list, such temporary appointment not to continue longer than ten days without prior approval by the commission in writing." In other words, under the permission of the Constitutional provision, the positions shall be filled, so far as practicable, from competitive lists; the Legislature, in the first place, and the Commission, in the second place, recognizing the exigencies of those conditions which do not admit of selection by competitive examination, providing for their being otherwise filled. I do think, Mr. President, that it would be a great mistake to put in one article of the Constitution any greater exception from the protection of the civil service article of the Constitution than is to be found in other articles creating other departments of perhaps equal importance in the State government. We have this here; then if

we have in the scheme of the Governor and State Officers a provision for the Public Service Commission, we will have a provision in the Constitution perhaps excepting from the civil service provision some official, some unskilled laborers, some emergency employees. And there will be other departments, and it will be breaking down that protection which is thrown around the civil service of the State by this constitutional provision, not one line or word of which should be weakened, and not one line or word of which can be weakened without seriously threatening the efficiency of the public service of the State.

Mr. Meigs — I would like to state, in just about two sentences, the reason why it was necessary to put this provision in this Proposed Amendment. The Committee realized the importance of removing the appointees of the Civil Service Commission, or placing them under civil service, and therefore, they suggested this form in their amendment. It seems that last year the Legislature, before they would grant an appropriation for the Conservation Commission, insisted that the fire wardens should be removed from the civil service rules and regulations. Of course the Legislature had then been so active it was found to be essential to make this provision.

Mr. Wagner — Was that done by some members during the last session of the Legislature?

Mr. Meigs — I don't know. That is the statement that was brought to our committee.

Mr. Wagner — It seems impossible.

Mr. Meigs — That is the fact, and it was to prevent the Legislature from removing these employees from civil service regulations that it was made a constitutional provision.

Mr. Austin — I would like to ask, in view of the statement that that occurred during the last Legislature, if you do not know that the Conservation Law has contained, for at least seven or eight years, to my personal knowledge, a provision that men employed under Sections 91 and 92 and 101 of this article shall, as emergency employees, be exempt from the provisions of the civil service laws of this State, and no such occurrence as you referred to ever took place during the last Legislature, to the best of my knowledge and belief. That is a general provision of law. It is not an exemption provided for in the appropriation bill, but has been the law for a number of years. I do not say where I stand on this proposition, however.

Mr. Meigs — I want to say that those provisions referred to emergency employees and not fire wardens.

Mr. Austin — All men.

Mr. Parsons — I think I can clear up the dilemma on this point. The sentence to which Mr. Austin refers is to be found

in Subdivision 4 of Section 92, and it reads: "All men employed under the provisions of Sections 91, 92 and 101 of this article shall, as emergency employees, be exempt from the provisions of the civil service laws of this State." Now, earlier in Section 92, in Subdivision 2, there is this provision: "The district forest ranger, the forest ranger, game protector, or any other officer charged with the duty of fighting fires, may, when necessary, employ men and teams to fight forest fires, and firemen to be known as fire wardens, to direct the work of men who are actually engaged in fighting forest fires." So that, by the express provision of Subdivisions 2 and 4 of Section 92, the fire wardens are taken out of the civil service law and are treated as temporary emergency employees. I have to-day obtained from the Civil Service Commission a classification of the employees. They have no list, nothing under the name of "fire wardens," because the fire wardens all come within this very definition of temporary emergency employees. Now, what the Committee has done, when it intended to provide that the fire wardens should only be appointed as the result of competitive examination, is exactly the opposite of what they intended, because the fire wardens are, according to the definition, temporary emergency employees. By the terms of this provision, which Mr. Wickersham seeks to point out, they are exempted from the civil service, and therefore Mr. Wickersham's motion should prevail in order to carry out this provision.

Mr. Whipple — I rather want to make a suggestion that Mr. Parsons wants to be right in his statement. It says all fire wardens, but there are different fire wardens. The permanent, paid fire wardens were left out of the civil service law by intention. Those that are drafted, which you seem to confound with those who are also out because they are temporary — there are two kinds of fire wardens, and I wanted you to get it straight — one is the year-around man at a good salary, and the other is temporary, and neither of them is in the civil service.

Mr. Parsons — In this list from the Civil Service Commission there is no one who is down as a fire warden.

Mr. Whipple — Certainly, that is right.

Mr. Parsons — The only fire wardens are those who are referred to in Section 92, and they come under the classification of temporary emergency employees. Now, you do not gain anything by keeping in this provision. If you really want to have them under the civil service, you gain more by taking out this provision than by leaving it as it is because of the general provision in the Constitution.

Mr. Westwood —As I understand the proposition of the gentleman from New York, Mr. Wickersham, it is that the present general provisions of the Constitution are competent to deal with the situation arising under the provisions in relation to the conservation department. That argument addresses itself to the broad proposition of uniformity. That uniform regulations, uniform procedure is advisable, the distinguished member of the Committee on Conservation from New York, Mr. Marshall, has recognized in pointing out to the Convention the advisability of using uniform language and uniform phraseology in the various articles and sections of the Constitution. At a later time I shall have something to say upon the principle of uniformity as applied to other subjects that will be under the consideration of this Convention. But it seems to me, as to this proposition, that, in view of the existing language of the Constitution, it answers all requirements here that we should permit the gentle influence of those provisions to fall alike upon all the departments of the State, including the department here under discussion, and for that reason I shall vote for the amendment offered by Mr. Wickersham.

Mr. Root — I am very much afraid of this provision. The doctrine of *expressio unius exclusio alterius est* is very likely to apply to such a provision as this, and we may find, instead of preventing the Legislature from making undue exemptions in this department, we have given a warrant to the Legislature to make exemptions as to all departments. "The legislature shall not at any time exempt from the regulations of the civil service any employees of the conservation department except", etc., might imply that, but for that express and specific prohibition, the Legislature has authority to exempt from the regulations of the civil service employees of other departments. Now the regulations of the civil service are determined by the Constitutional provision. If it is practicable to select civil servants by competitive examination under the general provision, the regulations must provide that; if it is impracticable, the regulations should not provide that. The Legislature can exempt only by a declaration lawfully — constitutionally, can exempt only by a declaration that a particular employee or class of employees do not come within the Constitutional provision, do not come within the regulations which the Constitutional provision allows, that is to say that it is not practicable to ascertain their fitness by competitive examination. Now, if we put into the Constitution a provision which, by necessary implication, carries a power in the Legislature to exempt the civil servants in other departments from these regulations, it must be co-extensive and can be only co-extensive with the purpose of

the general provision. I think we are doing a very dangerous thing, and I hope the Convention will not run the risk of weakening the effect of the whole civil service provision for the purpose of trying to strengthen it in regard to this particular department.

The Chairman — Is the Committee ready for the question?

Mr. Marshall — I recognize the force of the arguments that have been presented here by the President of the Convention and Mr. Wickersham, and yet it is very important to bear in mind certain facts, which, as I understand it, were the occasion of the insertion in this section of the words which it is now desired to strike out.

The Chairman — If Mr. Marshall will suspend for one moment, I will suggest that, as I understand the rules, we must adjourn at six-thirty, unless the majority leader makes some other motion.

Mr. Wickersham — I move that the session be continued until action is taken on the first section.

The Chairman — All in favor of the motion will say Aye, contrary No. The motion is carried.

Mr. Marshall — The gentlemen should know that one of the most important provisions in our conservation law to-day is that which deals with the subject of fire wardens and forest rangers. Unless we have in these positions men who are qualified, unless we take those positions out of practical politics, the whole system will fall down. Under the existing practice, under the existing legislation, as pointed out by Mr. Parsons, and as indicated by Mr. Whipple, the fire wardens, both the permanent ones and the temporary ones, are outside of the civil service. They are exempted.

Mr. Foley — Does the gentleman recognize that his language is unfortunate? There is no such thing as exemption from civil service. I do not think even the language of this amendment carries with it the intention of the Committee. The exempt class is within the civil service.

Mr. Marshall — However unfortunate that language may be is beside the question now. We are discussing not words, but the idea.

Mr. Wagner — Supposing the Legislature should pass an act exempting a certain position from civil service, using the word "exempt," and that is a position in which it is practicable to have a competitive examination —

Mr. Marshall — It would probably be an unconstitutional act.

Mr. Wagner — Exactly.

Mr. Root — Mr. Chairman, might it not be a violation of duty to pay compensation to any person appointed in that way?

Mr. Marshall — It undoubtedly would.

Mr. Root — Does not that remedy exist?

Mr. Marshall — The trouble is that we have been going on for years under a system which — whether the law is constitutional or not, I cannot here determine, because I am not sitting in a judicial capacity — which has passed muster and which has been acted upon for many years, with the result of a distinct injury to the State. The idea of those who desired to put this clause into the provision which we are now considering was not to weaken the civil service in any of its arms besides that of conservation, but to emphasize that, at least with regard to this, there shall be no exemption with respect to the employees of the Conservation Department. I certainly should be the last one to attempt to weaken the civil service, or to use any language which would, under the rule or interpretation to which the President referred — *expressio unius* — cut down the operation of the civil service provision, but I think that when we consider the facts which I will briefly mention in a moment, the language here will be seen to be only by way of emphasizing that which is now in the civil service provision. It is not excepting anything from the civil service, but it is merely pointing out that, in respect to one class of officials, as to whom there has existed a gross abuse during a long period of time, there shall be given greater efficiency and efficacy to the civil service provision; in other words, that there shall be placed in it some teeth which will apply at least to the subject of conservation. Let me make my statement of facts as they have come under my personal observation. I pass a portion of my summers in the Adirondack mountains. I have been quite observant of conditions there. I have been alarmed over and over again with respect to the frequency of fires in that region, and I have given instructions to every man over whom I can exercise any influence or authority to be very careful with respect to giving notice of the discovery of fires in their incipient stages. I myself have on several occasions discovered fires and have attempted to give warning, and my experience has been in that region that the fire wardens are generally not to be found when the occasion arises for action, because they are men who are employed because of their political efficiency, their efficiency in running caucuses and getting out the vote at the proper time. I have found that the men who are employed in these responsible positions were men who were engaged in other employments and occupations, dealers in ice, in coal, in wood, in mowing machines — men who run hotels or who were engaged in other vocations and avocations — and when they were needed they could not be reached on the telephone. There have been occasions when private individuals were obliged to fight fires. I myself have had occasion to man the pumps for the purpose of putting out a fire

which would have been a most destructive one, merely because private individuals had to perform public duties, there being nobody who was charged with the duty of fire warden in that particular region that could be found at the time of the emergency. I have also found that when they were asked to help they were utterly helpless, they were entirely destitute of resources, they allowed matters to go along in a slipshod way. I know that, in 1906, when there raged enormous fires in that region of the Adirondacks, one fire warden of a town which was menaced by the conflagration was called up by his wife and was informed of the fire. He was engaged, at four dollars a day, as guide to a gentleman who maintained a camp about twenty-five miles away from the scenes of his duties. He merely gave instructions to his wife as to what she should do and remained, like Sheridan, twenty miles away at the time when the fire was going on and the woods were burning up. Now, my idea is that we cannot be too emphatic in the Constitution with regard to this subject. No more politics in conservation! No more excuses with regard to subjects of this character! Let the civil service rules control with regard to all of the employees within this department. I would be entirely willing to strike out the exception at the end of this clause, but not the prohibition against the passage of any laws which would, directly or indirectly, exempt from the operation of the civil service, the men who act as employees of the Conservation Department.

Mr. Wickersham — Will he explain how, by striking out the exception and leaving this in here, he proposes to take his fire wardens out of politics any more emphatically than the Constitution of the State under the last section of the fifth article proposes to do?

Mr. Marshall — Yes.

Mr. Wickersham — I would like an explanation of that.

Mr. Marshall — My explanation would be that, on top of the constitutional provision which requires the civil service to be employed where practicable, the Legislature is also admonished by the Constitution that they shall not do what they have heretofore done in attempting to create exemptions from the civil service of the employees of the Conservation Department.

Mr. Wickersham — Then, do I understand that, by putting a provision in the Constitution telling the Legislature that it must not do unconstitutional acts which it has done in the past, you propose to find a constitutional remedy?

Mr. Marshall — No. I merely say that by way of emphasis, and as an interpretation of the Constitution. Unfortunately the constitutional provision as to the civil service resembles a barn

door in the facilities of driving through that it affords the Convention. This clause is intended as a stop-gap placed within that doorway in so far as the employees of the Conservation Department are concerned.

Mr. Wickersham — Will he state how, by exempting an important class of employees from the civil service provisions, he is going to close up the door?

Mr. Marshall — I do not exempt anybody. The provision is that they shall not at any time exempt from the requirements of the civil service any employees of the Conservation Department; in other words, that is a declaration that there shall not be an exemption, not that there shall be. There was inserted, at the suggestion of the Conservation Commission, the phrase, "except the superintendent, temporary emergency employees and laborers". I am perfectly willing to strike that out.

Mr. Wickersham — Would it not be better, for the sake of uniformity, to put a similar declaration in every article of the Constitution which creates State officials? And then, after all, would he have gained anything further than is gained by the Constitution in the ninth section of the fifth article when it is declared that "Appointments and promotions in the civil service of the State", etc., "shall be made according to merit and fitness to be ascertained so far as practicable, by examinations, which, so far as practicable, shall be competitive"? Do you, by declarations, by separations or by emphasis, or by putting it in every other article of the Constitution, add anything to that plain and specific language and if it comes to the question of administration do you think you can control that or make it more effective by reiterating in the Constitution that plain, simple declaration?

Mr. Marshall — I should say that it was, in view of the abuses to which I have called attention and which require redress and which, because of the length of time during which these abuses have continued, have almost ripened into a right. I was shocked a number of years ago by a decision of the Court of Appeals which was to the effect that where a violation of the Constitution had been long continued it was practically an amendment of the Constitution, and I am afraid that if we permit the continuance of this violation without setting our faces against them by express terms we may perhaps recognize that which has been in the past a violation of the Constitution according to some interpretations and create the very evil that we should be swift to redress.

Mr. Wagner — By striking out the exception here you want to accomplish this purpose, I take it, that no employee of the Conservation Department can be appointed except after a competitive examination?

Mr. Marshall — Yes.

Mr. Wagner — That is your point?

Mr. Marshall — That is exactly in conformity with the regulations of the civil service.

Mr. Wagner — Now, the language you have here, Mr. Marshall, in my judgment, does not accomplish that. You provide that no employee shall be exempt from the regulations of the civil service. Now, the civil service regulates all appointments, exempt, competitive and non-competitive. No one in any State department can be appointed to a State position except the position is first made exempt by regulation of the civil service department, so that all you provide here is that he shall be appointed pursuant to a regulation of the commission, but still you do not accomplish what you propose to accomplish.

Mr. Marshall — You say, what I do.

Mr. Wagner — I mean, what the language is.

Mr. Marshall — I did not frame this. This provision was formulated by a member of the Committee who has had to do with the subject of civil service and the language was obtained from the Civil Service Commission, but what I am contending for is not the precise words here. The idea is what I am contending for, namely, that the civil service should apply in all of its fullness and vigor to the employees of the conservation department.

Mr. Wagner — I would like to have some one acquainted with the procedure answer that point. I think if you want to accomplish what you are after, what you have got to say is that no appointment can be made to any position under the civil service except as the result of a competitive examination.

The Chairman — The Chair suggests that if this motion prevails, the debate that is now going on will not be material, and it is suggested that that be held over until we pass on this motion.

Mr. J. L. O'Brian — I earnestly hope that Mr. Wickersham's motion will not prevail, although I do not intend to speak at length upon it. I am looking at it simply from the standpoint of the present constitutional provision in respect to civil service. This sentence is, with all due respect to the framer, rather clumsily framed, but my objection is not so much to the phraseology as to the implication which it contains. "The Legislature shall not at any time exempt from the regulations of the civil service any employees," etc. Now, as Mr. Wagner has pointed out, regulations are made by the State Civil Service Commission, and this seems to contemplate that there are times when the Legislature does interfere with those regulations. But that is not the difficulty. The difficulties come when the courts, if this clause were left in this document, come to construe the old civil service section

which provides that all appointments shall be made according to merit and fitness which shall be ascertained, so far as practicable, by competitive examination — when the courts come to construe that section, they will be confronted with this section, and they will be obliged to read the two together. And there will always be an ingenious counsel who will assert that in some way the Constitution framers intended that the two sections should be read together, and that there were times when the Legislature made arbitrarily exempt from examination certain classes of employees, whether or not competitive examinations were practicable. Now, Mr. Chairman, I do not desire to be heard at length but I wish to say that, in my opinion, and it is based solely on the fact that I have had some experience in trying cases of this character, it would be a very dangerous thing to put anything in any other part of this Constitution which would throw doubt upon the interpretation of the present section and I certainly hope that the whole sentence will be stricken out.

Mr. Clinton — Mr. Chairman, I want to make an explanation on behalf of the members of the Committee. I notice the warning hand of the Chairman, but I do not wish to make an argument. For myself, and for other members of the Committee, and particularly for the member of the Committee who presented this language, I wish to say this, that we understood that this provision was satisfactory to the Civil Service Commission. That was incorrect. The Civil Service Commission objected to any provision going in, I am informed, but said that if one must go in, then they preferred this language. I do not wish the Convention to have the idea that the Civil Service Commission has in any way approved this clause.

Mr. Root — I want to make a suggestion, in full sympathy with the purpose of Mr. Marshall. It is that, instead of undertaking to make the provision about the application of the Civil Service rule relating to this particular department, which would weaken it as to every other department, there should be put in a clause making it the special duty of this commission to see that no employee was appointed, or, if appointed, was paid, unless appointed in accordance with the Civil Service provision in the Constitution, so that it would be somebody's specific duty, this commission's specific duty, to see to it that nobody is appointed or paid unless in accordance with the general provisions.

Mr. Wickersham — Will the delegate from New York yield for a question? Does he mean this commission or the Civil Service Commission? The Civil Service Commission would apply to all the departments of the government.

Mr. Marshall — In line with the suggestion made by the President, I have this suggestion to make, as I certainly never am a

stickler for words. It is only the idea that I wish to emphasize. I suggest that it should read as follows: "None of the employees of the Conservation Department, except the superintendent, his deputy, secretary, temporary emergency employees and laborers, shall be placed in the exempt class of the civil service," or words to that effect.

Mr. Wickersham — Mr. Chairman, I sincerely hope that will not be adopted. That is exactly what we are trying to avoid, the creation of exceptions to the Civil Service Law in the different provisions of this Constitution. Mr. Root's suggestion to put upon the Civil Service Commission the duty to see that nobody shall be appointed except pursuant to the civil service regulations and that nobody shall be paid unless so appointed, would, of course, apply to all the departments, but if we should put this exception here in this particular one we would have to repeat it in every other department of the State.

Mr. F. L. Young — Mr. Chairman, may I make another suggestion? I understand that no department is permitted to pay any employee without certification by the Civil Service Commission; now, is that right?

A Delegate — That is true.

Mr. Schurman — It seems to me, after listening to this discussion, that we are all interested in sound principles of civil service, and that, even if the last sentence of this section were stricken out, the interests of the Conservation Department would be completely protected; that that sentence does nothing to strengthen their interests, and that the retention of the sentence may imperil the application of sound civil service principles to other departments of the State. I hope therefore that it may be stricken out.

Mr. Rhees — Just one word on behalf of the Committee on Civil Service. I believe that it is in the interest of the general welfare of the State that this provision should not be in the Constitution.

The Chairman — The question is upon the motion to strike out. All those in favor of the motion will signify by saying Aye, contrary minded No. The motion is carried.

The motion now is upon the adoption of the whole article.

Mr. Austin — Mr. Chairman, I want to introduce one more amendment.

Mr. Wickersham — Mr. Chairman, I think we had better take a recess.

Mr. Austin — This will only take a moment.

Mr. Wickersham — I understand there are some others.

The Chairman — The Chair suggests to the minority leader that there will probably be a good many more amendments made to Section 1.

Mr. Marshall — I have an amendment myself.

Mr. Wickersham — Mr. Chairman, I move that the Committee recess until 8:30.

Mr. Wagner — Rise?

Mr. Wickersham — Under the rule adopted by the Convention, I understand that the Committee can recess until 8:30. I therefore move that the Committee take a recess until 8:30.

The Chairman — All those in favor of that motion will say Aye, contrary-minded No. The motion is carried.

Whereupon, at 6:40 p. m., the Committee took a recess until 8:30 p. m.

EVENING SESSION

The Chairman — (Mr. J. G. Saxe). The Committee of the Whole will come to order. Delegates will take their seats. The Clerk will read the amendment of the gentleman from Greene.

The Secretary — By Mr. Austin. On page 2, line 17, strike out the words "and fix his compensation", page 2, line 18, strike out the words "and fix their compensation".

Mr. Austin — Mr. Chairman, I just want to say two or three words more in reference to that proposal. No other body in the State, no other officer under the present Constitution has the power which it is proposed here to give to this commission to fix compensation. That is distinctly the duty of the Legislature or a matter to be considered in the budget if we adopt the budget system. It does not make any difference whether the commission fixes the salary, if the Legislature does not choose to appropriate the money to pay it, you cannot get it, and it is perfectly useless in my judgment to put such a provision in the Constitution. I think it ought to come out because no other department has the like power and no other department is to have the power under the report of the Committee on Governor and Other State Officers.

The Chairman — Is there anything further to be said about this Proposed Amendment? All those in favor of the amendment will signify it by saying Aye, contrary minded No. The motion is carried.

Mr. R. B. Smith — Mr. Chairman, I offer the following amendment. On page 2, line 8, strike out the words "prevention of pollution." I make this motion because I am absolutely in doubt as to the meaning of the term and particularly in the connection in which it is used. If it is the intention of the Committee to

confine the jurisdiction of this Commission to the powers now exercised by the Conservation Commission relative to the pollution of streams where certain dye stuffs and other deleterious matter is prevented from being emptied into the streams in quantities injurious to fish or to the propagation of fish, that is one proposition. If it is intended to take from the Department of Health the power which it now exercises exclusively over the public potable waters and also over the public waters of the State then I am absolutely opposed to it because the Department of Health should have absolute jurisdiction in that respect. Now it is used in the clause which relates to the control and conservation, prevention of pollution and regulation of the waters of the State. Everything except "pollution" relates to the regulation of streams and water storage propositions with which we are familiar. Now if it is to prevent the pollution of streams simply with respect to the construction of dams and the regulation of the flow of water, it seems to me absurd. The next clause relates to fish. The next clause relates to fish and starts with "The protection". Now if it is intended to confine the jurisdiction of the Conservation Commission to the purposes of the Commission now, as to the protection of fish the word "protection" fully covers it and I regard it as surplusage. In any event whatever construction was intended by the Committee should be made clearer I think because I apprehend difficulties will follow from it and particularly unless the powers and duties of the Health Department are specified in the Constitution.

Mr. Marshall — Mr. Chairman, I am very glad to have had this question asked so that we may in the course of debate indicate what the intention of the Committee is in this regard. I don't understand that the question is directed to any other clause. Now, the idea is that we are dealing with the general subject of conservation, the conservation of the natural resources of the State. That takes in these various heads which have been referred to, particularized by Mr. Landreth in the remarks he made this afternoon on this subject. The subject of water is one of the important ones. We are considering the waters of the State in their various uses; we are considering conservation of the waters and prevention of their pollution. Now, the prevention of the pollution of waters has to do not only with the question of the propagation of fish or protection of fish — that is an incident to the protection of fish. I called attention this afternoon to Section 150 of the Conservation Law, and other sections of the Conservation Law which relate particularly to the subject of the protection of shellfish and the correction of the dangers to which they would be subjected by the pollution of water and the various provisions of the law which sought to nullify the efforts made by some people to pollute water in such a manner as to destroy or endanger the life of shellfish or

make them the vehicles of contamination and the carriers of disease. Now this pollution may also relate to the potable waters of the State. It certainly should be within the power of the conservation department to protect the potable waters of the State from pollution, and likewise to deal generally with the waters. Now, the Conservation Commission is dealing in a general way with this subject, in a supervisory way, whereas the Board of Health deals with only a certain phase of the water question, the pollution of water as it may affect the public health in some particular locality. The Conservation Commission would not carry out any particular regulation in that regard, but would, at most, point out what the dangers are from pollution, the existence of pollution, if that is discovered, and set the Department of Health in motion wherever the public health may be affected, so as to counteract the effects of pollution. There is no inconsistency between the two. One merely deals in a supervisory capacity and the other is to carry out a special function so far as it relates to the public health, and in that regard the Board of Health would deal merely with that aspect of the question.

Mr. Parsons — I understand that the Board of Health in its regulations provides that in the case of reservoirs no habitation shall be within a certain number of feet. That is to prevent pollution of the water. Would this transfer that function from the Board of Health?

Mr. Marshall — Not at all. There is no intention that this Conservation Commission shall deal with particulars. They deal with the general subject, whereas the special question of the public health as it is affected by the pollution of waters would come within the executive powers or the administrative powers of the Board of Health.

Mr. Parsons — But the Board of Health in a way exercises administrative powers because it possesses —

Mr. Marshall — Yes, special functions with regard to public health. There are numerous bodies in this State which deal with certain subjects. It is utterly impossible to define a subject so far that you could only have one phase of it dealt with by one office and another phase dealt with by another.

Mr. Bannister — As a matter of fact if the Conservation Commission did its duty in the prevention of the pollution of waters for the preservation of fish, would it not incidentally relieve the health board of any necessity of undertaking those matters?

Mr. Marshall — It might; but the two would co-operate. The two would look to the same thing, only the powers of the Commission are general and in the direction of preservation and conservation whereas the board of health deals with the one particular aspect of the subject, the effect of pollution upon the public health as distinguished from the general aspect of conservation.

Mr. Deyo — Under this provision if it should be adopted what board or what body would have the right to control or prohibit the discharge of sewers into the rivers?

Mr. Marshall — The State Board of Health would undoubtedly take charge of that; but if the Conservation Department should learn of the fact of such sewage discharge into the waters of the State, the natural thing would be for them to call the attention of the Board of Health or the public authorities generally to the fact and if the Board of Health should neglect its duties undoubtedly it might report the subject to the appointing power so that there would be another means for dealing with a subject. As I was about to say when I was interrupted by these questions, which are of course entirely proper, it is an utter impossibility in the Constitution to define with particularity where the authority as to one particular subject begins or another ends, because they are apt to run into each other. With our very complex life and government there are innumerable subjects in which several departments of the government might become interested. We are getting to the point in many directions where the executive department, the legislative department, and the judicial department sometime find themselves very much entangled. But these things will have to work out by a process of natural elimination and natural definition. The only idea I desire, however, to impress upon the gentlemen asking these questions is that the Conservation Department is supposed to look at this entire subject in its broad, general aspects, whereas the Board of Health in this particular respect is looking at it in the aspect of the question which protects that specific subject which comes legitimately within the purview of the powers of the Board of Health.

Mr. Parsons — If the Constitution only mentions the prevention of pollution once and when it does mention it mentions it in connection with powers granted to the Conservation Department might the thought not hold that it was intended that the prevention of pollution of water should be entirely with the Conservation Department?

Mr. Marshall — I think not. I don't know whether it is intended to have a board of health in the Constitution. If a board of health is put into the Constitution naturally there would have to be a reconciliation if there should be any conflict of jurisdiction. If it is not in the Constitution, we are now proceeding on the knowledge of the fact that there must be some body which exercises the powers of a board of health and I think this explanation will be very useful in determining what the intention of the Convention may be with respect to the relative rights and powers of the two bodies.

Mr. Parsons — Was not it the intention of this phrase to give to the Conservation Department the power which it now has by Section 247 of the Conservation Law which provides that no dye-stuffs or other deleterious matter shall be thrown or allowed to run into any waters, injurious to fish life?

Mr. Marshall — Not necessarily. That is one of the effects of pollution, that it might interfere with fish life. I had already referred to the potable waters where fish life may be entirely negligible. To my regret I know that there are certain waters of the State which have very little fish life in them now.

Mr. Parsons — Well the Conservation Commission now has no jurisdiction over the waters except for the protection of fish life?

Mr. Marshall — I don't believe that there is any specific provision. Professor Landreth will be able to answer that aspect of it a little better than I might do, but my notion is attention has been more particularly directed to the subject of fish life than to any other, although there is absolutely no reason why the great subject of human life as affected by the potable waters does not come within the jurisdiction of the Conservation Commission.

The Chairman — The delegates will please come to order. The Chair is of the opinion that nothing is to be gained by departing from parliamentary rules in the Committee of the Whole.

Mr. Marshall — My answer to the question which was put before the Chair made his ruling is that we can only deal with what we have before us. I cannot now say what some other committee may report in regard to the Board of Health, and there may be an absolute omission to deal with that subject in the Constitution. But as I said we nevertheless have knowledge of our public history. We are presumed to know what is in our statutes with regard to the Departments of the State; we do not know that there is a State Board of Health, and we do know it is a very efficient body at present, and we know however that its special function is, so far as the water supply is concerned, to deal with the effect of pollution upon the public health. But that is not at all inconsistent with the granting of this general authority to the Conservation Department of a general survey of the entire subject of the water supply, and of the water resources of the State. It might as well be said in this connection that the canals are interested in the waters of the State; in the use of the waters only as feeders of the canal, reservoirs connected with the canal. Undoubtedly the Canal Department, or the Department of Public Works, or whatever the department may be that will be ultimately vested with jurisdiction over the canal, will have to deal with the waters which are necessary to feed canals, and it is not pretended for a moment that the Conservation Commission, by reason of the powers here granted, can in any way interfere with the canals.

Mr. Austin — Isn't it clear in comparing this sentence with the one which precedes it that it is not intended to take away any of the powers given to any other department, because in one sentence you give exclusive and in the next sentence a general control?

Mr. Marshall — Yes. That was what I was about to say, but I was diverted by these inquiries. The statement is absolutely clear. There is an antithesis between the exclusive care relating to the forest preserve and the general control over the waters of the State. Now I did intend, so as to make this idea even more apparent than it is, at the proper time to move an amendment to line 3 of page 2 so as to strike out the word "article" and in place of it to insert the word "Constitution" so that it shall read, "subject to the limitations of the Constitution," so that if there are limitations elsewhere in the Constitution that would preserve the specific powers that may be granted by the Constitution. The Canal Department, for instance, the Board of Health —

Mr. Bockes — Mr. Chairman, this is the subject to which I called attention this morning, as it has occurred to me that if this amendment is accepted, still the control, the conservation and regulation, the general control sought for by this Committee, will still be retained by the language that is left in that section. Now it has been suggested by one of the questioners that the Conservation Department might take away those duties from the Health Department, which to my mind would be a very serious situation. We have a Health Law organized upon this subject in a very elaborate manner and the Health Department organized in an elaborate manner throughout the State so that if at the present time a factory or mill or various concerns mentioned in the statutes undertake to deposit any refuse into a stream or running water they must first have their permit from the Commissioner of Health, and if at any time any one thinks that the health of the community is being risked in any way by certain factories, he has his local officer of the Health Department through whom he can make his complaint and have samples of water sent to Albany and we have the machinery in motion to take care of the situation. So it would be to my mind a very serious matter if under this subject of pollution this department should go to work and establish subordinate officers to take care of this function and either duplicate the work of the Health Department or deprive the Department of Health of that work.

Mr. Parsons — It seems to me that nothing is lost by adopting Mr. Smith's amendment and striking out the words "prevention of pollution" because as he says under the words protection of fish you accomplish all that is desired and then you will avoid the danger of having two boards with perhaps the same jurisdiction or the danger that inasmuch as we put the words "prevention

of pollution" into the part where we describe the functions of the Conservation Department, we deprive the Board of Health of any power in that regard unless we put the same words with regard to the Board of Health.

Mr. R. B. Smith — The people of the State have been pestered and bored by inspectors from different departments overlapping and covering the same subject until they are beginning to be very sensitive. If you can trust the Conservation Commission to keep out of politics, as Mr. Marshall says, and not pester us with a horde of inspectors after they get the supreme control that this Constitution proposes to give them, that is one thing. If you are going to give them a supervisory power simply, then the proper word to use is supervision; but I don't see, when you have the word "control," is not that broad enough, is not that broad enough to cover all the power you desire? The English language must be broad enough to do it without introducing language which contemplates a conflict with some other department which is perhaps to-day the most important State department we have. We have absolute protection against any sewage or any refuse in the health article, absolutely — pretty nearly — with the limitation "so far as practicable." Yes, it does go farther than that in language, but I mean if it was brought down to close construction, I don't believe that as a matter of public policy it would enjoin anybody from emptying sewage into a stream unless it injured fish or public health. That is the trouble about it now. I take that position because I believe it. I do say that Mr. Marshall with his ingenuity and command of the English language can certainly find some term broad enough to give the commission all the power it ought to have without submitting it to the danger of conflict with another department.

The Chairman — All in favor of Mr. Smith's motion will signify by saying Aye, contrary No. The Chair is in doubt. A call will be made for the ayes and noes again. All those in favor say Aye. All those contrary-minded, No. The motion seems to be lost and is lost.

Mr. Marshall — I now move that the word "article", in line 3 of page 2, be stricken out, and in place thereof there be substituted the word "constitution", so that it will read, "subject to the limitations in this constitution contained, the department shall be charged with the development and protection of the natural resources of the State."

The Chairman — You have heard the motion of Mr. Marshall. All those in favor signify by saying Aye. Contrary-minded, No. The motion is carried.

Mr. Marshall — I move that on line 8, page 1, the word "one" be stricken out, and the word "first" be substituted. It now

reads, "ending on January one", and it should read "ending on January first, nineteen hundred and seventeen".

The Chairman — You have heard the motion of Mr. Marshall. All those in favor signify by saying Aye. Contrary-minded, No. The motion is carried.

Mr. Marshall — I now move that Section 1 as amended be adopted.

Mr. Clinton — I offer the following amendment.

The Chairman — The Secretary will read the proposed amendment.

The Secretary — At the end of Section 1 add 'Nothing herein contained shall deprive the canal authorities of the control of the waters of the canals and of the canal feeders, or in any wise limit or interfere with such control.'

Mr. Clinton — The amendment offered by Mr. Marshall to strike out the word "article" and insert the word "constitution" does not save the control of the waters of the canal in the prism and the waters of the canal in the feeders within the canal authorities. It was intended for that, I know, but it does not do it, because there is nothing in the Constitution, and will be nothing in the Constitution when the canal article is adopted, in whatever form it may be adopted, which reserves to the canal authorities that control. The present wording of this section is the vesting in the Conservation Commission the control and regulation of the waters of the State. Ordinarily, I would be willing to leave to the courts the question of the construction of this section as affecting the inferential control of canal waters by canal authorities, but such attacks have been recently made by the Conservation Commission upon that very control that, loath as I am to present any further amendment, I must insist to this Convention that it is necessary that we should have a specific provision to prevent that in the future. The Conservation Commission for three years endeavored under the general powers of recommendation, to induce the Legislature to pass a bill which was within the power of the Legislature to pass, which would have done two things: It would have absolutely devoted what are called surplus waters of the canals to the control of the authorities having control of conservation for water purposes, bringing about a direct conflict between the navigation on the canal and power plants which would be using the surplus water; and the second thing that it did was to set in motion a plan of conservation for power purposes in this State under State regulation and control which would give absolute control over the waters of the State as to prevent the regulation and control of the water feeders and the regulation and control of the waters of the State as impounded in the great dams at Delta and

Hinckley for canal supplies. That bill was passed by one Legislature and vetoed. That bill very nearly got through the next Legislature, but was stopped because by the time that the matter had been fully argued and ventilated the supremacy of the Conservation Commission in such matters had ceased to exist. This amendment does not restrict these general powers intended to be conferred, but it does retain the control in the canal authorities over the feeder waters and the waters of the canal in the prism, and I might add in the channel. If I were convinced that there could be no question in regard to it, I would not urge the amendment, but I am not only not convinced, but decidedly of the opinion that the language used here will give the paramount control to the Conservation Commission. I have nothing further to say except to again call the attention of the Convention to the fact there is absolutely nothing in the Constitution which preserves the control that I seek to preserve by this amendment.

The Chairman — Is the Committee ready for the question? All those in favor of Mr. Clinton's amendment say Aye, contrary-minded No. The Chair is in doubt.

Mr. Marshall — I ask for a division.

The Chairman — The gentleman from New York, Mr. Marshall, asks for a division. Those in favor will rise. Contrary-minded will rise. The motion is carried. The question now arises upon the motion of Mr. Marshall of New York, that the article as amended be approved. All those in favor will signify by saying Aye, contrary-minded No. The article is approved.

The Secretary will read the second section.

The Secretary — Section 2. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the trees and timber thereon be sold, removed or destroyed. The commission is, however, empowered to reforest lands in the forest preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely, but shall not sell the same.

Mr. Blauvelt — One of the questions that received very careful consideration by the Committee was the question of constructing highways to the Adirondacks. The majority of the Committee felt that it would be unwise to permit the construction of highways, on the ground that it would necessitate cutting of considerable timber. I wish to offer an amendment to this section permitting the construction of a single highway, in length about twenty-five miles, from Long Lake, in Hamilton county, to Old Forge, in Herkimer county, by way of Blue Mountain Lake and Raquette Lake at the present time.

The Secretary — By Mr. Blauvelt. Page 3, line 5, after the period, insert in italics the following: “ Nothing herein contained, however, shall prevent the State from constructing a State highway from Long Lake in Hamilton county to Old Forge in Herkimer county, by way of Blue Mountain Lake and Raquette Lake.”

The Chairman—Does Mr. Dow, the Chairman of the Committee on Conservation, accept the amendment?

Mr. Dow — I can not agree to that until after consultation with other members of the Committee.

Mr. Angell — Mr. Chairman, at the proper time, I am not sure whether this is the proper time, I desire to offer an amendment to the entire section, Section 2.

The Chairman — Inasmuch as we are trying to take the amendments up one by one, the Chair will recognize Mr. Angell just as soon as this amendment is passed.

Mr. Angell — I will present mine just as soon as this amendment is disposed of.

The Chairman — Yes, just as soon as Mr. Blauvelt's amendment is disposed of.

Mr. Marshall — If Mr. Blauvelt has no objection, I think the better way to deal with this subject is to deal with it in its broad aspect before we go to specific amendments; that is the course we pursued in regard to Section 1 and it previously saved a great deal of time, because, in order to properly argue Mr. Blauvelt's proposition, it may become necessary to indicate what the general policy of the Committee has been with respect to the entire section, and inasmuch as this section is really the subject-matter of the minority reports, it would be a more logical and more satisfactory method to discuss the broad aspects of the question rather than its limited aspect.

Mr. Blauvelt — My purpose in introducing it in the beginning was to have it before the Convention at the time the section as a whole was considered, because I assumed that in the general discussion on the question, the question of highways will be considered, and I do not press the amendment at this time, but ask to have it considered in the general consideration of the section.

Mr. Marshall — It has been suggested by Mr. Hinman, who is more experienced in legislative matters than I am, that any amendment that any member desires to present to this particular section it be presented so that we can discuss them at one time, and thus avoid a lengthy and unnecessary prolongation of the debate.

Mr. Angell — Mr. Chairman, I desire to propose the following amendment to Section 2.

The Secretary — By Mr. Angell —

SUBSTITUTE FOR SECTION 2 OF ARTICLE — OF THE PROPOSED AMENDMENT SUBMITTED BY THE COM- MITTEE ON CONSERVATION

Section 2. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed. *But the Conservation Department shall provide for survey and classification of all the lands in the forest preserve into the following areas:*

First: The lands upon the mountain tops, and the lands in and contiguous to the lakes and major streams, and such other lands as for any reason the department shall determine should be so classified.

Second: All the lands of the State within the forest preserve.

The classification shall be made after such public advertisement and hearing as the department may prescribe and it may, after like notice and hearing, transfer lands from the second into the first area. The department may provide for the sale and removal of timber, or any part thereof, that is mature or detrimental to forest growth upon the lands, or any part thereof, in the second area, under such conditions as it shall prescribe in accordance with the principles of scientific forestry; but such lands shall remain as forest lands and the forest cover thereon shall be maintained and perpetuated.

Section 2 (a) The Department may authorize, in its discretion, the use of lands belonging to the State in the forest preserve for highway purposes.

Section 2 (b) The Department may lease camp sites of limited area for limited periods, on restricted portions of the second area of the forest preserve, upon conditions to be determined by it.

Section 2 (c) The Department may sell lands outside the limits of the Adirondack and Catskill parks as now established by law, except lands contiguous thereto, and the islands in, and lands adjacent to Lake George. The proceeds of such sales shall be kept in a separate fund to be used only for the purchase of lands within the limits of said Adirondack and Catskill parks.

Mr. Angell — I desire in a very few words to explain the purpose of the proposed substitute which I have offered to the Committee's amendment. This Convention, in Committee of the Whole, has just adopted a provision which provides for a commission on conservation with wide powers, presumably composed

of eminent citizens from various parts of the State, who are to pursue a continuous policy having in mind the conservation of all the natural resources of the State. With that action I am in hearty accord. I believe that action is for the best interests of the people of the State and that it will redound in years to come to the great credit of the State in the work which will be accomplished by this commission which you, by your vote to-night, have determined to establish. But, Mr. Chairman, I would call the attention of this Convention to one very important proposition, to my mind one of the most important propositions which can come before this Convention. You have given this commission these wide powers. You have by your vote said that you had confidence in that commission to work out and establish and maintain and to carry on a broad principle of conservation in behalf of the State, but what has been done in regard to the most important part of the natural resources of the State? Section 2, as proposed by the Committee, is the same as section seven, article seven, of the present Constitution, except that it limits the power of the Conservation Commission to a greater extent than article seven, section seven, of the Constitution. Section 2, as proposed by the Committee, provides that the lands of the State now owned, or hereafter acquired, constituting the forest preserve as now fixed by law shall forever be kept as wild lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the trees and timber thereon — the former provision reading “the timber thereon,” being amended by the present Committee to read “the trees and timber” thereon — be sold, removed or destroyed.

This is a provision which, if possible, makes more inaccessible the Adirondacks and the Catskills to the people of the State of New York than they have ever been before. The present provisions of article seven, section seven, as interpreted by the Attorney-General, were very narrow in their limitations as to timber. The Court of Appeals has determined that a tree is any growing thing of a tree nature, which may be only six or eight inches high. It will be impossible, under this provision, for any one to cut a tent pole, a tent stick, or anything in the Adirondacks for the purpose of the construction of a tent, or for any other use whatever. The purpose of my Proposed Amendment is to enlarge the discretionary powers of this Conservation Commission which it is proposed to establish. My provision calls for power in the Conservation Commission to build highways whenever in their discretion they deem highways necessary through the Adirondacks. The people of the State cannot get access to the Adirondacks except through highways which may be built

through that section. A proposition has been suggested for building a highway, one single highway, to connect one point up with some particular point. Does this Convention wish to nail down the Commission to the construction of one limited highway in the Adirondacks leading from one to another point and absolutely stopping there? The Adirondacks are the possession of the people of this State. They bought them for a particular purpose. They bought them for the great big purpose, first of having a natural storage for the water supply of the State, which should feed the streams and supply the agricultural resources with the water which is necessary for their maintenance. But that, I take it, Mr. Chairman, was not the only idea which the people had in mind at the time they spent that money to purchase the Adirondack and the Catskill parks. They desired these parks for their use as recreation grounds, as pleasure places, where they might go in the summer with their families and enjoy the lakes and the mountains and the timber lands which are there contained. It is impossible under the present provisions of the Constitution for any one to construct a mile of highways in the Adirondacks, if by any chance those highways cross the lands now owned by the State, and that I submit is a most unjust and unreasonable provision to all the people of the State. They should have access to that country and they can only get access as we permit, as we remove this ridiculous restriction which is now in Article VII, Section 7, which is sought to be continued by the present report of the Committee. The amendment which I propose would also permit the leasing of camp sites in the Adirondack and Catskill parks upon the lands in the second area. Before I go into that I desire to say a word as to the areas which I have proposed. That amendment provides for a survey and a classification of all the lands in the forest preserve into two areas, the first of which shall consist of the lands upon the mountain tops, the lands around the lakes, and along the major streams, and such other lands as the commission may for any reason think should be incorporated in that area. That would preserve all that area for the aesthetic purposes of the people of the State. If they desire to go in there and see wild forest country, and timber lands and mountains in their natural state they can do it under this provision.

The second classification which is proposed by this amendment shall include all the other lands of the State in the forest preserve except those in the first classification, and upon that second area under this Proposed Amendment, the Conservation Commission, after survey and classification, may determine that any part of the timber upon that land, or any part thereof may be cut, sold or removed, in accordance with principles of scientific forestry, but

the forest cover on such land shall be forever maintained and perpetuated. Now, it is a fact recognized by all who have knowledge of forestry — I do not mean now an expert knowledge, but even by those who have an ordinary knowledge of forestry matters — that the removal of a few mature trees upon a tract does not in any way interfere with the uses of that land for the purposes of a natural storage reservoir for water. I read from the last report of the Conservation Commission:

“Only a few people appreciate the fact that nearly all the merchantable material in a forest is contained in a few of the larger trees. The larger trees are but a small proportion of the whole stand. Therefore, their removal does not injure the forest cover.” This Proposed Amendment would allow — it would not compel but it would allow — this Conservation Commission, composed of men of wisdom, after a careful survey and experimentation to say, that the timber upon the second area might be used as merchantable material, in so far as they determine that it should be so used. That, as any one who is familiar with forestry knows, can be done without the slightest injury to the forests as a natural storage reservoir for water. I realize no less than any other members of the Committee on Conservation that the first great principle in the conservation of the natural resources of this State is the preservation of the water resources of the State. I realize that that preservation is absolutely necessary to the protection to the agricultural lands of the State; that the subsoil waters may be kept to such a height that the productivity of the soil is not endangered. I also realize that upon the preservation of this natural storage depends the rivers of our State, eighty per cent. of which have their headwaters in the Adirondacks or in the Catskills, and that the preservation of the waters of those rivers is absolutely necessary if our industries are to succeed and go on in prosperity as they have in the past; and if I did not know that this proposal would not affect in the slightest degree the Adirondacks, either as a place of scenic beauty from the aesthetic standpoint on the one hand or as a natural storage for the waters, I would be as opposed to it as any man in this Convention; but knowing that it is not that, that it will produce a great revenue to the State, that it will relieve the people to a large extent of the burdens which are now imposed upon them, and confer other benefits, I am in favor of and urge this Convention to a serious consideration of this Proposed Amendment. There are a few figures which perhaps you will bear with me while I give. Reference was made this afternoon, I think, in the speech of Judge O'Brien, to what he referred as the limitless timber resources of the State of New York.

If any member in this Convention has an idea that the timber resources of the State of New York are limitless, I advise him to pause and ascertain the facts before he votes upon any such assumption as that. The forest products of the State have decreased from 1908 when they were 1,225,000,000 board feet to 1913, when they were 853,000,000 board feet; approximately a decrease of one-third in a period of five years. The total production of timber in the State of New York represents but a small proportion of the timber used in the State, the use being approximately five to eight times the production. Now it is estimated by those of competent authority that the average growth of timber is 200 feet per acre. There are in the forest preserves approximately 1,200,000 acres of heavily forested land, or, in other words, 240,000,000 feet represents the annual growth of timber in the State of New York. What use does the State permit the people of the State to make of this timber? It grows to maturity. It falls, it rots upon the ground. A million dollars worth every year, and the timber supply of the State decreasing at the rate of one-third every five years. Talk about a limitless supply of timber in the State of New York. Do you, Mr. Chairman, realize what this means to the people of the State within a very short time? If the consumption goes on at a proportional increase over the production, it will be but a very short time before the outside forests which are not owned by the State will be absolutely depleted. One of the purposes of this Conservation Commission, as outlined in the report made by the Chairman, was to conserve not only the lands of the State in the forest preserve but to conserve the water supply of the State by conserving the timber wherever it might be throughout the State; the wood lots; the forested areas, wherever they occur. If the consumption of timber goes on at the present rate the result in a very short time will be appalling. All of these outside tracts will be stripped of every bit of timber there is on them, when they might be saved if the State would open to a reasonable use the forest preserves. In suggesting this Proposed Amendment, I have not followed my own judgment alone, although it has been my judgment for years, since I have been conversant with this subject, that the limitations of article seven, section seven, were a continuing mistake on the part of the State. There are eminent authorities which support the proposition that the lands of this State should be so divided as to areas, and should be utilized, one as utilization forests, one as forests to be preserved for their scenic beauty and their aesthetic value. The Conservation Department of the State has for years advocated such a change. During the last two sessions of the Legislature a concurrent resolution was passed which would

eliminate from the Constitution the present drastic provisions of article seven, section seven, which the majority report of the Committee seeks to perpetuate. This is the language of the concurrent resolution adopted by the Legislature: "The prohibition of section seven shall not prevent the cutting or removal of mature, dead or fallen timber or trees detrimental to forest growth on lands constituting the forest preserve, nor the leasing of camp sites and the construction of roads and trails necessary for protection against fire, and for ingress and exit. The Legislature may authorize the sale of lands outside the limits of the Adirondack Park and the Catskill Park, as such parks are now established by law. The proceeds of such sales of lands shall be set apart in a separate fund and used only for the purchase of lands or for the reforestation of such parks."

An attempt was made this morning in the report of the majority committee to discredit the Legislature for this recommendation which it had made in two successive sessions to the people of the State of New York. It was suggested in that report that the Legislature adopted provisions of this kind as a matter of course, with no consideration, simply because certain interested people came before the Legislature and urged their adoption. I submit to you who are familiar with the workings of the Legislature that such an imputation in the report of the majority committee was entirely unfair and without justification. The Legislature submitted these concurrent resolutions because it was of the opinion that they were in accord with what the people of the State desired, and for no other reason. Judge O'Brien this morning quoted from the letter of Mr. Graves, the United States Forester, but he did not quote the significant part of that letter. Mr. Graves said there: "Undoubtedly considerable parts of the Adirondack Preserve should be retained as pristine forests for the recreation and aesthetic enjoyment of the people. I believe, however, that it would be equally unfortunate for the Constitution to prevent the people of the State from carrying out, after expert advice and public consideration, a policy of practical forest management on certain parts of the Adirondack lands or any other lands owned by the State which is determined to be the highest use which can be made of the particular portion of the public holdings." The Camp Fire Club, and the Association for the Protection of the Adirondacks, an association which has always taken particular pride in its stand against any deleterious interference with or use of the forest, have passed resolutions to the effect that the limitations named in the concurrent resolutions of the Legislature, should be removed from Article seven, Section seven. Many other organizations and societies in the State have done the same

thing. The Republican platform, upon which the Republican delegates to this Convention were elected, announced this principle in its platform adopted in Saratoga last September: "We favor conservation and utilization of the State's forests and waters under conditions which will safeguard the rights and interests of the State." The Democratic platform, upon which the Democratic delegates-at-large to this Convention were nominated, contained this provision: "The Constitution, in relation to the preservation of forests, should be so amended as to permit a profit to the State to be derived from the scientific preservation and cultivation of our forest lands, at the same time protecting them against exploitation by private interests." Now, I submit that we have absolutely, by establishment of this Conservation Commission, protected our forests against any exploitation by private interests of any nature whatsoever. We have established a Commission in which we all have abundant confidence. Are we going to tie their hands absolutely? Are we going to build a Chinese wall of exclusion around the forest preserves so that no one can go in there over highways, because no highways shall be built; so that no one can go in there and camp, because no camp sites can be leased? Are we going to make a wilderness of the Adirondacks and call that conservation?

Mr. Chairman, I was very much interested a day or two ago in reading an official publication of Cornell University, the proceedings at the opening of the Forestry Building, May 15, 1914. The honorable Chairman of our Conservation Committee read an article upon that interesting occasion, entitled "Forestry as an Investment," and in connection with that article, which is very lengthy, occur a few interesting passages. "I think the statement is correct that the net returns from the conservatively managed forests of France, Switzerland and Germany vary according to local conditions, between three and four per cent. After weighing as best I can the relative factors in Europe and America that go to influence net returns from forest conservation, I incline strongly to the belief that forestry will pay at least as well here as it does abroad, and may easily pay materially better. That belief is predicated not on the condition of to-day, nor does forestry deal with the conditions of to-day, but on the conditions that we may reasonably expect in the not distant future. I believe, as I have stated, and you have ample ground for your strong conviction, that not only is forestry desirable from the viewpoint of the nation, but also it is a good investment for the individual."

That is from the Chairman of the Committee on Conservation which reports in favor of standing, in regard to the provisions of Article VII, Section 7, exactly where David McClure stood in the

Convention of 1894. Now, strange to say, the Chairman quotes with approval in his majority report the opinion of David McClure as given in the Convention of 1894, as follows: "That your Committee has reached the conclusion that it is necessary for the health, safety and general advantage of the State, that the forest lands now owned and hereafter acquired by the State, and the timber on state lands should be preserved intact as forest preserves and not under any circumstances be sold." It is most significant, Mr. Chairman, that the Committee on Conservation should adopt in its report in the year 1915 the same language which was used by David McClure in 1894. Apparently the majority of the Committee appreciate nothing in regard to the advancement in forestry since that time. At that time, in 1894, I venture to say that there were not half a dozen trained foresters in the State of New York, and perhaps in the United States. To-day there are more colleges and universities which have departments devoted to instruction in forestry and to training young men in forestry and giving degrees than there were then individual foresters in the United States. Now, forestry has spread throughout all our people. It has spread so that there is scarcely a lumberman, a lumber company or any one interested in lumber in the Adirondacks or the Catskills or elsewhere who has not trained foresters in his employ; and who does not, in cutting any tracts, study the reports of those foresters, and cut in accordance with scientific principles. The idea which used to be prevalent, perhaps, that a crop of trees was something to be cut off and destroyed, has given way to the idea which is now held by all intelligent persons upon the subject, that trees are a crop to be maintained and perpetuated, and cut from year to year, just as any other crop, just as a crop of hay or grain or any other useful product of the soil.

There is one other proposition to which I wish to call your attention, Mr. Chairman, in conclusion, and that is an address delivered on the same occasion to which I referred a few months ago, the proceedings at the opening of the Forestry Building at Cornell University, by J. S. Whipple, in which these things were advocated: "The Constitution should be changed to permit the sale of detached parcels of the state lands outside the parks where that is desirable, except at Lake George, and in the near vicinity, and also permit the leasing of camp sites within the state preserve. The change of the Constitution should also permit the conducting of conservative lumbering on the lands that should be lumbered and the building of necessary roads." Therefore, we have the words of so eminent an authority as Delegate Whipple for the support of this proposition, even though he has not favored it in

his report before this Convention. I trust that this may have very serious consideration. The propositions regarding the leasing of camp sites, I have not gone back to, nor the proposition which involves the sale of lands outside the limits of the Adirondack and Catskill Parks which are owned by the State, because I imagine that those will be fully treated by others and I do not wish to take the further time of the Convention.

Mr. F. L. Young — Mr. Chairman, the delegates who have remained here to-night, about forty in number, as I count them, are to be commended for their fidelity and loyalty. I doubt, however, the wisdom or the benefit of continuing the discussion on such an important matter as this in the absence of so many delegates. The Adirondack forest, the whole forest preserve, is to me unknown land. I want to hear this debate, because I am going to be guided in my vote by what I hear. The absent delegates ought to be in precisely the same position. I think it is wrong for these men who have made such a careful study of this great subject to be required to give the benefit of their work and their study to such a body as this, and for that reason I move that the Committee do now rise, report progress and take a recess until Monday at ten o'clock,—ask leave to sit again — the regular motion.

Mr. Marshall — Mr. Chairman, I heartily agree with the suggestion made by Mr. Young. It is very evident that we shall not be able to conclude the argument this evening, and, as has been said, this is the very heart of the conservation article, and upon the disposition of this question depends the fate of the whole article. I therefore trust that the motion will be adopted.

The Chairman — I take it that the motion is that we rise and report progress, and not to take a recess.

Mr. Angell — Mr. Chairman, if it is proper, I would like to move that the amendments which I have proposed be printed and placed upon the general orders calendar with the proposal from the Committee.

The Chairman — The motion is that the Committee rise, report progress and ask leave to sit again. All in favor of that motion will signify by saying Aye, contrary-minded, No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. J. G. Saxe — On behalf of the Committee of the Whole, I beg to report progress and to ask leave to sit again, also to report the recommendation of the Committee that the two pending amendments by Mr. Angell of Warren and Mr. Blauvelt of Rockland, be printed on the general orders calendar for Monday.

The President — The question is on granting leave to sit again and printing the pending amendments for the information of the Convention.

Mr. Foley — May I also suggest that the amendments already adopted be reprinted with the bill and that the bill as amended be reprinted for the consideration of the Convention on Monday?

Mr. J. L. O'Brian — I desire to offer a motion to the amendment of the Chairman of the Committee of the Whole, if he will accept it, that when the Committee sit again it resume consideration of this special order.

Mr. J. G. Saxe — I understand that that was covered by the wording adopted and I accept the amendment.

The President — May the Chair suggest that as numerous amendments have been adopted in the Committee to the first section of the bill, it would be very useful for the information of the Convention if the bill were reprinted in the condition in which it was left by the Committee.

Mr. Foley — I so move.

Mr. J. G. Saxe — Mr. President, may I report the amendments adopted in the Committee of the Whole so that they will be before the whole House?

The President — You may.

Mr. J. G. Saxe — The Chair hands up to the Secretary the amendments that have been made in Committee of the Whole to Section 1, which have been approved by the Committee of the Whole.

The President — Those amendments are now in the possession of the Convention. The motion now is that the Committee of the Whole have leave to sit again; that on Monday morning the consideration of the pending bill, No. 785, be resumed at the point which the Committee had reached, that the bill be reprinted with the amendments already adopted by the Committee of the Whole, for information, and that the two pending amendments by the gentleman from Rockland and the gentleman from Warren be also printed for the information of the Convention. I think that covers it. All in favor of the motion will say Aye, contrary, No. The motion is agreed to. The leave to sit again is granted and the printing as indicated will be done and on Monday morning the Committee of the Whole will resume consideration of the pending bill at the point which had been reached in Committee of the Whole.

Any further business to come before the Convention?

Mr. Parsons — I suggest if Mr. Lindsay cares to take up the amendment in regard to the Indians that we go into Committee of the Whole and dispose of that this evening, and then we will have more time on Monday.

Mr. Lindsay — I take it that the Committee having that in charge is ready now at any time to dispose of it. But I do not think in the short time we have — of course there are some here

that perhaps might like to have something to say about it,— we would have time to complete its consideration.

The President — It is moved that the Convention go into Committee of the Whole on general order No. 43. All in favor of the motion will say Aye, contrary No. The Noes appear to have it.

Mr. J. G. Saxe — Mr. President, I move that we do now adjourn.

The President — All in favor of that motion will say Aye, contrary No. The motion is carried and the Convention stands adjourned until 10 o'clock Monday morning. Whereupon, at 10:10 p. m., the Convention adjourned to meet at 10 a. m. on Monday, August 9, 1915.

MONDAY, AUGUST 9, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Unto Thee, Oh Lord, our God, from whom cometh every good and perfect gift, we lift our hearts in gratitude and praise. How precious are Thy thoughts unto us, Oh God, and how great is the sum of them, if we should count them over, more in number than the sand upon the seashore. We bless Thee for the gift of life and for all the influences of home and friendship and for all the blessing of service and for all those influences that enter into our lives, to enrich us in character and to make us effective in service. And now as we set ourselves to the tasks of the day, we pray for the inspiration of Thy good spirit, so that we may do the things which are in accordance with Thy great and holy will. We pray that Thy protection may be about all those who are in places of power and authority in our land. Bless Thou the Governor of this State and the members of his family; forbid that any unruly hand should be raised to do them harm or injury, and grant that there may be among our people a great respect and reverence for constituted authorities and for men in high places of power. We invoke Thy blessing upon the members of this Convention this day. Grant unto them the clear vision, the wise word and the sound judgment and the truly effective action so that all their deliberations and enactments may work together for the prosperity and progress of our Commonwealth. For Thy Name's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed?

Mr. Stimson — I wish to call attention to an error in printing that I find in Document No. 35, laid on our desks this morning, purporting to be a minority report to the report of the State Finance Committee on the budget. This misprint is that from

this Record here it appears as if it were filed by Mr. Wadsworth, instead of which it should be filed by Mr. Wagner. And Mr. Wadsworth's report in reference to charities has, by an error in the printing, been confused with the other. Document No. 35.

The President — Is there objection to correcting the error pointed out by Mr. Stimson? The Chair hears none, and the Document No. 35 will be withdrawn from the files of the members and from distribution, and will be reprinted correctly and redistributed.

The President — Are there any other amendments to be made?

Mr. Meigs — Mr. President, in Document No. 28, on page 6, the report signed by Mr. Angell and others is called a majority report. This is an error, as it is a minority report. The majority report immediately precedes.

The President — Without objection Document 28 will be reprinted to correct the error to which Mr. Meigs referred.

Mr. Mereness — By request, I desire to present a petition on behalf of the Spanish-American War Veterans of the Thirty-Second Senatorial District.

The President — The memorial submitted by Mr. Mereness from the committee of the Spanish-American War Veterans will be referred to the Committee on Civil Service.

Mr. Heaton — By request I hand up a memorial claimed to be signed by thirteen residents of the county of Rensselaer concerning the Spanish-American War Veterans and ask that it be referred to the Committee on Civil Service.

The President — That reference will be made.

Mr. Linde — Mr. President, I present a similar petition and ask that it be referred to the Committee on Civil Service.

The President — The memorial handed up by Mr. Linde will be referred to the Committee on Civil Service.

Mr. Lindsay — I desire to present a memorial from the Spanish-American War Veterans of the Forty-Second Senatorial District and ask that it be referred to the Committee on Civil Service.

The President — Same reference.

Mr. Cobb — By request, I hand up a similar petition from the United Spanish-American War Veterans of the Thirty-Eighth and Forty-Second Senatorial Districts, 775 signatures.

The President — Same reference.

The President — The Chair lays before the Convention a communication from the Medico-Legal Society, which will be referred to the Committee on the Judiciary.

Any further memorials or petitions?

Mr. Curran — I offer the following in behalf of the Spanish War Veterans of the Forty-Sixth District, by request.

The President — The memorial from the Forty-Sixth Senatorial District will be referred to the Committee on Civil Service.

Communications from the Governor and other State officers.

Notices, motions and resolutions.

The Secretary will call the roll of districts.

Mr. Latson — I move that Proposed Amendment, Print No. 763, now upon the General Orders calendar, No. 32 — that the Committee of the Whole be discharged from further consideration of this amendment, and that it be recommitted to the Committee on Militia and Military Affairs.

The President — All in favor of that motion by the chairman of the Committee on Military Affairs will say Aye, contrary No. The motion is agreed to.

Mr. Barnes — I would like to move that bill Printed No. 754, which was amended last Friday, now numbered 786, retain its place as a special order for Wednesday morning. I did not notice on Friday that in amending it the desk had taken it off special orders, to which it had been assigned for Wednesday. It was put down as a special order for Wednesday about a week ago. I therefore move that it be made a special order for Wednesday morning, immediately after the calling of the regular order.

The President — All in favor of that motion will say Aye, contrary No. The motion is agreed to unanimously.

Mr. J. L. O'Brian — Mr. President, I offer the following resolution:

The Secretary — Resolved, That the Secretary cause to be printed forthwith 1,000 extra copies of the amendment proposed by the Committee on Cities, General Order No. 50.

Mr. J. L. O'Brian — Mr. President, in view of the fact that there is a great demand for this amendment and the supply is now practically exhausted, I ask immediate consideration of this resolution and move its adoption.

The President — The gentleman asks for immediate consideration. Is there objection? The Chair hears none and the resolution is before the Convention. Those in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

The President — Reports of standing committees. Are there any reports of standing committees?

Mr. J. L. O'Brian — Mr. President, the Committee on Rules makes the following report.

The Secretary — The Committee on Rules to which was referred the resolution offered by Mr. Quigg, in relation to limiting debate, reports that it has given consideration to the resolution; that the Committee is of the opinion that discussion in the Convention has not advanced sufficiently to make expedient at this time limitation of debate proposed by Mr. Quigg and the Committee therefore reports adversely upon said resolution.

The President — The question is upon agreeing with the report of the Committee. All in favor of agreeing with the report will say Aye, contrary No. The report is agreed to.

Mr. Low — Mr. President, I beg to submit a report of the Committee on Cities, amending Section 10 of Article VIII of the Constitution. In doing so I ask leave for Mr. Wiggins to submit a minority report at a later date.

The President — Without objection that leave will be granted. The Secretary will read the majority report.

The Secretary — Mr. Low, from the Committee on Cities, to which were referred Proposed Constitutional Amendments, Int. No. 411, Print No. 423, introduced by Mr. Wiggins, in relation to city sinking fund; Int. No. 455, Print No. 467, introduced by Mr. Baldwin, in relation to the regulation of the issue of city securities; and Int. No. 665, Print No. 681, introduced by Mr. Sanders, in relation to the debt limit of cities, reports by Proposed Amendment entitled "Proposed Constitutional Amendment." Second reading — To amend Section 10 of Article VIII of the Constitution, by dividing it into two sections, to be known, respectively, as Sections 10 and 11, by amending the second part thereof, and by adding a new section to be known as Section 12.

The President — Is there objection to the receipt of the report and the Proposed Amendment? Referred to the Committee of the Whole.

Mr. Wiggins — Mr. President, with relation to Mr. Low's request that I be given permission to file a minority report at some later date, I desire to say I am in entire sympathy with this Amendment. The first portion of it is the result of a Proposed Amendment introduced by me. The only portion to which I have any objection is the latter portion which is designed to permit extending the debt limit of any city or rather its power to borrow, the bonds issued during the period from 1904 to this date, so that it becomes retroactive. It is quite possible that I may be entirely mistaken in the views which I entertain upon the subject and having that in mind I do not wish to have permission to file a minority report because if the views which I do entertain I find are correct, or wrong, I may present that matter to the Convention when the amendment is under discussion.

The President — Any further reports of standing committees? Reports of select committees.

Third reading.

Unfinished business in general orders.

Special orders.

The Convention will go into Committee of the Whole for the continued consideration of the Conservation Article. Will Mr. J. G. Saxe resume the Chair?

(Mr. John G. Saxe resumes the Chair.)

The Chairman — The Convention will come to order in the Committee of the Whole. The question arises upon the motion of the gentleman from Warren county, Mr. Angell. Any further debate?

Mr. Mereness — I desire to offer an amendment to Section 2.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Mereness: Add at the end of Section 2: The Department may authorize the sale by the State of land owned by it, not forest land, and not within or contiguous to a State park. The proceeds of such sale shall be used for the purchase of land within the State park.

Mr. Mereness — I desire to take up the time of the Committee for a very few moments, in reference to this proposed amendment. The amendment offered by the delegate from Warren county, the last paragraph of it, covers the same subject that I have covered by the amendment offered by me, but it is involved with so many other matters not germane to the proposition that I desire to have considered, that I have concluded to offer my suggestion in the form of a separate amendment. I shall not take up any time discussing the broad proposition embodied in Section 2 of the proposed Conservation article, because there seems to be almost complete unanimity of sentiment here in regard to the substance of Section 2. I will only say this, which is possibly slightly personal: The name of Mr. David McClure has been mentioned, and I desire simply to say that Mr. McClure in the Convention of 1894, at the request of some public-spirited gentlemen in the city of New York, first brought the subject of State forest lands to the attention of the Convention, somewhat late in its Sessions, and upon his motion a select committee of five was appointed by the President of that Convention to consider the matter of State forest lands, of which committee Mr. McClure, of blessed memory, was the chairman, and I had the pleasure and the honor of serving with him upon that committee.

It was during the preparation of that article and the subsequent discussion in the Committee of the Whole that we had the present provision of the Constitution, Section 7, of Article 7, which the present Conservation Committee of this Convention has changed only by the addition of two words. I think it must be conceded by everybody who is familiar with the subject that that Committee and the Convention of 1894 builded much more wisely than they then knew or realized in reference to the preservation of the State forests. I don't think that any mistake was made on that occasion. A vote a few years after that was taken upon the proposition of modifying that provision to some extent so far as allowing the leasing of camp sites and some other matters, and we had at the election upon that proposition something that I

think never has occurred in the history of the State, that there were over 700,000 of the electors of the State who took the pains to be particular to vote NO opposite the provision intended to open up the forests of the State, and I don't think that this Convention or any other sensible person would care to make a new attempt along that same line. I don't think that I am exaggerating when I say that the lands of the State, owned by it twenty-one years ago, were then of a good deal of value, but I think that to-day they are worth at least five times as much as they were then, and so far as the future is concerned, I don't think we will make any mistake if we continue the policy then so wisely inaugurated at the suggestion of Mr. McClure. I am in entire sympathy with that, and don't think we are saying too much if we say that in twenty years more those lands will have continued to increase in value; and that, instead of being worth \$30,000,000, they will be worth in time from \$60,000,000 to \$75,000,000, certainly the most valuable asset the State of New York owns at the present time. Now, then, to the matter of the amendment: I find that in the sixteen counties which are known as Forest Preserve counties, there are at the present time something over 800 parcels of land that are entirely outside and not contiguous to either of the State parks. A great many of those parcels are very small; the most of them have absolutely no timber upon them, and it seems to me an unwise policy to still prevent the State from disposing of those separate parcels of land and getting the money that can be realized from them, be it much or little, and using it in the purchase of lands which are within the State parks. Some people have suggested that those arid and mostly denuded parcels of land should be retained by the State with the possible purpose some time in the future of reforestation, but it seems to me that does not meet the question at all. The State has over a hundred thousand acres of denuded land within the State parks, and under any system of reforestation that could possibly be devised, it will certainly take at least fifty years to reforest the land that the State now has within the State parks. I don't intend to take up very much more time over this matter. It seems to me a business proposition and very likely the Committee on Conservation, which has certainly given very careful consideration to the article which it has presented — possibly it didn't fully realize the exact situation in reference to these separate and outside parcels of land. I beg to make a quotation from page 33 of a book issued by the Conservation Commission of the State of New York with reference to the resources of the forest preserves. In reference to parcels that I am mentioning the Commission says: "There are, as already noted, 313,277 acres of these preserves which are outside of the two parks. This area includes

183,725 acres of land under water, leaving a balance of 129,552 acres of varying character. This area of land is contained in 1,166 separate parcels, exclusive of the islands in Lake George, or lands under water. They do not perform a true function as a forest preserve. The areas vary from a fractional part of an acre to tracts of a thousand acres. A few are so situated that they can be used for forestry purposes, but fully 90 per cent. of the parcels are small, isolated, often difficult to locate accurately and difficult and expensive to protect. As a matter of policy it would seem more desirable to dispose of these outlying areas and acquire other land within the parks. This will result in consolidating the present holdings, reduce administrative expenses and have the same investment and area, which would better serve its purpose." Now, it seems to me that with this Conservation Department which is about to be established, it may very safely be left to those public-spirited men to decide upon the matter of disposing of outlying and small parcels of land that are not forest lands, and of avoiding the administrative expenses connected with the ownership of those separate parcels and to take the money that may be derived from those parcels and buy land within one of the State parks. I hope that the Conservation Committee, upon fuller consideration of the matter, will see the wisdom of clothing the Conservation Department with that discretion.

Mr. Weed — Mr. Chairman, may I ask that the amendment be read? There was so much confusion at the time it was moved that I could not hear it.

The Chairman — Mr. Weed, there are four amendments now pending before the House. Which one do you desire to be read?

Mr. Weed — The last amendment offered by Mr. Mereness.

The Chairman — The Secretary will read the amendment offered by Mr. Mereness.

Mr. Mereness — Mr. Chairman, may I add just one word regarding a matter which a gentleman has just asked me about and which I omitted to mention? I should have stated that the great majority of these separate and outlying parcels have come to the State through the sale of lands for unpaid taxes.

The Secretary — Add at the end of Section 2: "The Department may authorize the sale by the State of land owned by it, not forest lands and not within or contiguous to a State park. The proceeds of such sale shall be used for the purchase of land within the State park."

Mr. Weed — I assume that the word "department" there means "commission." We have spoken of the department more than of the commission.

Mr. Marshall — "Department" is proper. We will have to change that.

The Chairman — Is the House ready to vote upon any of these four amendments? Is there any one else that desires to be heard?

Mr. Dunlap — I move to amend Section 2, line 6, by striking out the word "commission" and inserting the word "department." We have used the word "department"—"Conservation Department"—all the way through, but by some error in printing or otherwise the word "commission" crept in. I think the original draft had the word "department" in it. It is now "The commission is, however," and it should be "The department is, however."

The Chairman — Unless there is objection we might have a vote at once on Mr. Dunlap's amendment that the word "commission" on line 6, page 3, should be struck out and the word "department" be substituted. All in favor of that substitution will say Aye. Contrary, No. The motion is carried.

Mr. Quigg — Are there two copies before us? In my copy on line 6, page 2, it is "The department shall be charged."

Mr. Dunlap — It was so, but in the copies on the table to-day, it has been changed.

The Chairman — You have the wrong page. Page 3, line 6, instead of "commission" the word should be "department."

Mr. Beach—I desire to say that I hope that Mr. Angell's amendment will not prevail. I say this because I believe that to conserve the forests means to preserve them and not destroy them, and I also believe that this question of conserving the natural resources of this State is one of the greatest questions which the people of the State have to consider to-day. And, considering the natural resources of the State, nature certainly bestowed them upon this State with a prodigal and a lavish hand. On our western border we have a chain of lakes which, taken in their entirety, form the longest line and the greatest area of inland navigable waters anywhere on the face of the earth. At the other end of our State is the second largest city in the world. Now what makes New York a large city? It is not its theaters, although they are unsurpassed; it is not its hotels, although for comfort and luxuriousness of appointment they are the wonder of all Europe; it is not the Produce Exchange nor the Stock Exchange nor Wall street which makes New York a great city. New York is a great city because Manhattan Island lies directly in the mouth of one of the grandest harbors in the world. But ships do not come into the harbor of New York just to anchor and get out of the wind. They come there because the grain, the lumber, the manufactured product, the best that this great nation provides, are brought here by the Great Lakes, the Erie canal, the Hudson river, the converging lines of railroads and merchant marine of America. And before this disastrous war broke out the ships of Germany, the ships of

England and the ships of France sailing from the port of New York and going into all zones and gathering gain from all continents again came back to our shores laden with the profits, which, more than any other one thing, have served to make this State, our State, the Empire State, first in wealth, first in population and first in commercial importance.

Now what I want to say is that long before the Erie canal was built there was a navigable waterway from tidewater to the Great Lakes, and a way that was used. When Hendrik Hudson first came through the Narrows, the Hudson river was navigable — not only was the Hudson river navigable up to where the Mohawk river entered it, but the Mohawk river was navigable. It was navigable from where it entered the Hudson clear up through into the center of the State until it came to the Great Divide which is now the city of Rome and was deflected north; and even in that divide nature was prodigal in what it bestowed upon New York, because while there are other passings in the long Appalachian range which stretches along our Atlantic coast clear up into Maine there was no other doorway so inviting, and no steps so low, and when the navigators of the Mohawk river stepped out at the divide, they only had to ascend about fifteen feet and go along a perfectly level stretch of country for three miles and they stepped into other navigable waters. Then they could embark in Wood creek which would take them into Fish creek, then to Oneida lake, to Oneida river, to Oswego river and to Lake Ontario. We know this was navigable water. In 1751 there was a fort there, because it was a strategic position and recognized so, built at the western end of the carry. That fort had a moat around it. One of the protections of the fort was a moat filled with water eight to ten feet deep supplied by the waters of Wood creek. To-day the waters of Wood creek have so receded that that moat is dry. We know that there was a highway in July, 1777, and we know it was a navigable highway, because we know St. Leger started from Ontario, came down Oswego river through Oneida lake and up through Wood creek, with his troop of Tory redcoats and his band of treacherous Indians, intending to go across the carry and take the Mohawk river, and proceed to join Burgoyne at Albany, and we know it was navigable on August 3, 1777, because St. Leger met General Herkimer at Oriskany; he had met General Peter Gansevoort at Fort Stanwix, where the Stars and Stripes were unfurled to the breeze in the face of the enemy for the first time in the history of this country; and we know that the men who were there with him were very glad that there was plenty of water, and that the current was with them, because they went back a great deal faster than they came. Now, that stream

to-day, Wood creek, which in those days floated flatboats which would carry from twenty-five to thirty men in its natural days, you would have great difficulty in transporting a single man in a light canoe. There is just as much rainfall. The bed of the stream and the banks of the stream are there, and for about one week in the spring the banks are not only full but the meadows and all the surrounding country clear from Rome to Oneida lake are one vast sea of water. Then it goes down. That water used to be conserved by the forests, and I have known in a big rain, in the summer time, that the water came up suddenly, overflowing the meadows, and carrying the haycocks off down the stream. Now, this produce had an ultimate destination, but it carried no bill of lading that the owner could negotiate. All that has been brought about by the denuding of the forests. We don't have to go to China or Japan, or France, or back to the old biblical countries where the Aryan people left place after place that they had denuded of the forest, because they could not sustain life. Right here in New York State we have a living example of what it will do.

What did it do on the Mohawk, on the east side of the divide? No one would dream now of going up the Mohawk as a navigable stream from Little Falls to Rome, and yet in the spring, before the Delta dam was made, there was a great running flow of water, every spring, spreading out over the meadows from Rome to Utica, and every low place, particularly down by Amsterdam, and then it subsided so that it was just a silver line. One of the greatest pieces of conservation that has ever been done in this State has been the building of the Hinckley dam and Delta dam. Take West Canada creek, every spring it menaced and sometimes inundated Herkimer. I don't know what will be the effect of the Hinckley dam, but I have seen the Delta dam in operation about two years, and it absolutely controls the flow of the water. Never once has the water overflowed the top, because if it ever should overflow the top that would mean that they had lost control of the stream. It has been within six inches of the top once and within a foot of the top once but it serves its purpose so far as holding back the water and permitting the steady flow of water the year around. Now, the reason why these streams are not what they were years ago is because the trees have been cut off. Now are we learning anything by experience? Are we still cutting off the trees or have we stopped? During the past ten years the average cut of timber in the United States has been about 40,000,000,000 feet, and 1,000,000,000 feet of this has been cut in the State of New York. We cannot think in billions. We cannot grasp what that means. But it is necessary that every member

of this Convention should be able to grasp this question and know what has been going on. I will try to put it in concrete form. A billion feet of timber is cut in the State of New York every year. It is a conservative estimate to say that any acre of timber, taking forest acres in and out, will produce not to exceed 6,000 feet. Dividing 1,000,000,000 by 6,000 we find that there have been denuded each year 166,000 acres. There are about 640 acres in a square mile. Dividing 166,000 by 640, we find that there have been 260 square miles of territory denuded of forest each year in the State of New York. Now, to put that in still more concrete form, that means that a strip of territory which would occupy a space a mile wide and stretch from the City of New York along the Hudson river to the Mohawk river and then along the Mohawk river to Utica, is every year being cut in this State. This cannot go on. If it does we are sure to rue the day that we did not take the opportunity which is now presented here to us to stop this great waste. It is not a business proposition for the State of New York to sell its forests in their present condition. The State does not know what it owns. Some years ago lumbermen, when they wanted to buy a tract of forest, were content to send a cruiser through the woods who looked about him on both sides, walked back and forth, and when he came back to his employer reported how much he thought there was in that tract; but to-day they do not do it that way. They have learned something about forestry, and one of the things forestry has taught them is that trees can be counted and estimated, and to-day when a man wants to buy a tract of timber he sends out a forester, and if the forester knows his business, he is an engineer and he has a transit with him and he runs a perfectly straight line right through the woods and he has a chain with him, and fifty feet on each side of that line his employees count the trees. When they get to the end of the tract, they move over 100 feet, and come back, and when that forester is through he not only knows how many feet of lumber there are on the tract, but he knows how much there is of each kind — how many feet of beech, birch and maple; how many feet of pine and spruce, balsam and hemlock; and he furthermore knows the topography of the ground. He knows whether it is on a mountain side, or on a mountain top or in a great big swamp, or whether it is on accessible ground, and whether the timber is scattered or clumped. That is what the Conservation Commission should do. They should find out what the State of New York owns in the way of timber and then after they have found it out, even though it takes five or ten years to go over it all, then they will know what they have got to sell. They will know by the topographical details of the report whether the taking of some

mature timber out of some certain parts of the territory will be a damage to the whole forest preserve or not; and, should their report show that it would be to the advantage of the State, after the people know what they have, then submit a constitutional amendment and let them sell it at that time, if the people will.

Mr. Byrne — Do you understand that people who are scientifically conducting these operations, removing these trees, would cut down timber if it tended to destroy the supply of water?

Mr. Beach — To answer that question means taking more time than I ought to take before this Convention, but we have to take into consideration the fact that this question of forestry in this country is a new problem. Our conditions are so different here from what they are in the older countries, which have studied this problem, that we cannot use them as a comparison. Why, they talk about the Black Forest in Germany. It has been lumbered for a thousand years, and yet there is more timber and better timber there to-day than there was then. I know it is a good forest now, but what it was a thousand years ago nobody knows, because there are not sufficient records. But in this country lumber is not of sufficient value for a forester to go into a tract hither and yon and pick out a tree here and a tree there. By the time he has assembled those trees, they will have cost him more than he can get out of them, and every time he fells one of those giants of the forest he knocks down eight or ten small and thriving tree, and he cannot help it. Why, in Germany wood is so valuable that when a limb drops off of a tree and falls to the ground, it doesn't stay there. The whole forest is farmed out in plots, and the peasants will walk for three miles and carry back on their backs a bundle of these fagots for fuel. Why, we wouldn't think of doing that in this country. We sometimes find that a few of our newly come people will go to a car on the New York Central Railroad and pick out a few lumps of soft coal, but as far as going into a wood lot and picking up brush and taking it home, they would not dream of it. And the answer to this question is that at the present time, timber, and particularly hard wood timber, which is most of what is left in our forest preserve, is not of sufficient value to take out separate, isolated, widely-separated trees and make any money in the operation.

Mr. Byrne — Do I understand that you object as to that portion of the amendment which reads: "The Department may provide for the sale and removal of timber, or any part thereof, that is mature or detrimental to forest growth"?

Mr. Beach — Yes.

Mr. Byrne — Doesn't it go on and say, "under such conditions as it shall prescribe in accordance with the principles of scientific

forestry"? Now, if the principles of scientific forestry were carried into effect, wouldn't they protect the water?

Mr. Beach — I don't believe it is a possible thing to control a lumberman if he once takes an axe into a forest. I don't think rules can be devised which would protect the forest if you once allow an axe in there.

Mr. Byrne — Thank you.

Mr. Tierney — Mr. Chairman, I was not going to say anything on this proposition until I heard this last statement, that you couldn't let a lumberman into the Adirondacks without fear that he would destroy all the timber within his reach. While I hold no brief in this Convention for the lumber interests, I want to say that for some years I have been attorney for people engaged in that business. And the methods employed by lumbermen to-day and the care which they take of the forest put to shame the policy of the State of New York in caring for its forests. Let me say to the gentlemen of this Convention that to draw a contract involving lumbering operations to-day requires much more skill and care and attention than is given to the drawing of leases of apartments for New York City. More restrictions and conditions are imposed upon the men who are to do the cutting than are imposed upon any big business in the City of New York. I know a business corporation which conducts in connection with its business a lumber trade. It owns in the Adirondacks approximately one hundred thousand acres. I called up the forester last night and he told me the estimated cordage this year of soft wood would be about 20,000 cords. They will cut 200,000 feet of hardwood; this corporation maintains a Bureau of Forestry which has in its employ the year around seven officers and clerks. But this corporation maintains a Bureau of Forestry which has in its employ the year around, seven experts. This department is headed by a graduate of the School of Forestry of Yale. The people who cut for that corporation cannot cut any timber, hard or soft, until it is selected by those foresters. Let me say further to this Committee that this year this corporation took from its nurseries— it maintains three nurseries for raising trees,— it took and planted a million and a half of pine over lands which it had cut during the last five or six years, and over land which had been burned and the fire on which came from State lands. Previous to this year it had taken from these nurseries and planted over three million of trees. They say "if you let the lumberman in he will destroy your forests"? I know of another lumbering corporation, the head of which knows more about lumbering than any man who has ever been in the service of the State of New York, who is an expert on the subject. I wish you gentlemen could go into his office and see the plans carefully worked out by his foresters. He can tell you not only how much lumber he is

going to cut this year, where he is going to find it, but he will tell you where he can cut it for the next five years, and he has arrangements made to replant the forests from which he takes the timber.

The spirit which actuated the lumberman of twenty years ago has changed, gentlemen. He might then have cruised the forests and taken what he wanted where he found it. But to-day, unbound by a provision such as the State of New York has in its Constitution, he has been able to learn something. In a fit of rage, twenty years ago, the Constitutional Convention stopped the progress of this State with regard to the care of its forest lands. You need not worry, gentlemen, about lumbering interests wanting to break into the Adirondack forests. They take better care of them than does the Conservation Commission. They spend more to fight fires and to build fire trails. I was amused, in reading the Record this morning, to see this from a distinguished jurist from New York. On page 1351 of the Record, Judge O'Brien is quoted as saying: "It is within the experience of every man here who has gone up in that North country, and who has been through its forest preserves, who has seen where the lumberman came with the axe and where hamlets sprung up, that when the forests were denuded the hamlets disappeared and there was nothing left but sawdust to show where once had been a small and apparently contented people. It is a migratory business and it has no relation to the upbuilding of the State. It is transitory. * * *" Well, if the gentleman from New York, or the gentlemen from the other cities of the State who think they learned the forests by two or three weeks' vacation up there in some palatial camp where they have bath tubs and electric lights, would spend a little more time and travel up and down the rivers of that part of the country and see the money that is invested in pulp mills, he would hesitate before he said that the lumber business is a migratory one, that it has no relation to the upbuilding of the State or that it is transitory. You need not fear, gentlemen, that the lumberman will do anything to make the streams shallower and shallower; you need not fear that he will destroy the wonderful natural resources in our water power. He is willing to do more to-day than the State of New York can do. Now that is just a word to you gentlemen. If there is opposition to Mr. Angell's amendment, it must come either from ignorance or prejudice. I am sorry that every member of this Convention was not able to be here Friday to hear Mr. Angell's argument. I suggest that you read it. Learn at first hand from a man who knows, a man who has studied this question, who is an authority upon the subject. I am sure that if you do, those of you who are now ignorant on the subject will vote for his amendment. To those of you who have a prejudice I can only say that we who have been born and brought up and who have lived in

sight of those great hills and mountains have no desire to destroy them. We do not want to destroy their verdure, their scenic beauty. We want to hand them down to our children and to our children's children and to the generations of the State which come after us; and we want to hand down to them, with that scenic beauty, the usefulness of those forests, and we will do just as much and more than any other part of the State to make the forests a useful preserve.

The Chairman — The gentleman from Cattaraugus, Mr. Whipple. Before the delegate starts, I will call his attention to the fact that he introduced an amendment on Friday to Section 2 which the Chair rules out of order. I think it is in respect to kindling wood. Does the delegate wish to move that amendment at this time?

Mr. Whipple — Not now, Mr. Chairman. It is more or less a secondary matter and a single matter which can be disposed of, but there are two or three other matters which are more worthy.

Mr. Chairman, we have come now to the heart of the conservation of natural resources so far as it has been given to the Department that we have undertaken to establish, and, to my mind, it is the most important feature of the whole question, because upon the forest more depends in this country than upon any other one natural resource; and I will try, if you will bear with me, to make that proposition clear.

Mr. Angell's amendment comprehends four propositions: That in relation to cutting and utilization of green timber; that in relation generally to building highways; that in relation generally to having camp sites; that in relation to the disposition of detached parcels of lands. His second proposition, that of roads, comprehends in a larger extent the proposed amendment of Senator Blauvelt. The Senator's amendment comprehends the building of a single road designated, specified, fixed, so far as language can fix it, in a Constitution. The other overlaps that and proposes authority to build any kind of roads anywhere at any time. With the proposition of camp sites, as nearly every one here knows, I am entirely in accord. But whatever the advantages or disadvantages of that are, it sinks into insignificance compared with the question of whether or not we shall cut timber upon the State's holdings. I am in favor of, substantially, Senator Blauvelt's amendment for a specific road up through the Fulton Chain and Raquette Lake and into the Saranac lakes, because that furnishes for forty miles through our best forests an opportunity for better fire protection; because it furnishes a beautiful and convenient way for thousands of our people to go from the western and southern parts of our State and it would complete a chain of roads around and through a vast area of our forest that would be used

by hundreds and thousands of automobilists and give the people of the State a chance to see and admire and therefore make them better defenders of their own forests. For all these purposes that road is important and necessary. But that is of no consequence, compared with this greater question. The question whether the Conservation Commission may take out dead timber and burn it up or throw it away and not utilize it for the necessities of the people of the Adirondacks who pay \$14 per ton for coal with millions of cords of dead wood all around doing no good but doing harm, is a matter of plain sense and decency; but that, too, is not to be considered in connection with this greater problem. Therefore I propose to devote such little time as I may have to the question as to whether or not the axe anywhere shall be put into that forest.

Now let us be perfectly fair about it. Let us state the facts, because a man who does not treat the subject fairly and state that which is of interest to the other side of the problem, does not treat it as he ought to. First, let me say that I am interested in this special plea by the attorney for a lumber company. It is a good argument for that side of the case. I shall be interested, I know, in what my friend Mr. Meigs will say, because I want to say here in his presence that I think he is as fair a man as is engaged in the lumber business and as any man I know; and yet I always have felt that he was persuaded a little too much because of his experience and twenty-five years of training along a single line. Turning to the attorney of the lumber company and to his argument that opinions otherwise than his are born of ignorance or of inexperience, let me say to him that my opposition is not born of ignorance and there is no prejudice because I have no earthly interest in it except the interest of a citizen. I live 300 miles from these particular forests. So far as I am concerned, that statement does not apply. I have had an experience of forty years, and that experience is worth something. For how much, you have to judge. Now, I say, let us be fair. There is in the Adirondacks and in the Catskills, owned by the State, unquestionably twenty million dollars' worth of timber. Twenty million dollars' worth. If it was not for taking the time, I could give you the total amounts in each section of spruce, pine, hemlock, hardwood, and all the others, and their price per thousand feet. It amounts to substantially twenty millions of dollars, estimated by the best man you have in the State. And, right there, let me say to this delegate who represents the lumber company, he has some knowledge, I admit, but the best lumber inspector in the United States never ran a line through any forest, and he never asked a man to count the trees on each side of a line. This forester, and if you look

up the record of Mr. Kenwell of Indian Lake, who makes the estimates for Union Bag and Paper Co., you will find that he never has been found to make an estimate on any such basis as that, and you will find that his estimates have never been questioned. He goes along through the forests; he looks them over; he does not draw a line, but he determines by experience and skill how much there is upon a tract of land, and they have acted upon that determination and never lost money. So, that is not the universal rule; and, while I am touching that, let me say to all of you gentlemen that the term "scientific forestry" is a misnomer, and no educated forester treats it as such. He says it is practical forestry. There is no such thing as scientific forestry. There is no fixed rule that can apply. Every acre differs from every other acre. There are some places you want to cut clean; some places very little; some places more; some less. It is not a scientific proposition at all. There are twenty million dollars' worth of timber there. It is attractive. Commercially it is an important thing. Commercially it might, for a little time, keep down the price of lumber for you and me and others who buy. Commercially it may be worth ten times as much twenty years uncut as it is to-day. You cannot tell what it means commercially.

In addition to that twenty millions of dollars' worth of timber you have got ten million dollars' worth of lumber that would be left and the lands and lakes in the State, making a property worth thirty millions of dollars. Do you know what it has cost you? Do you know what this acquisition of land has resulted to the people of the State? It has cost you four and a half millions of dollars, and it is worth thirty millions, and a corporation can be organized in thirty days to take it over at that money, at that price, and it is the only business the State of New York ever invested in that it has made a single dollar on, any way. Now, I say, let us be fair. There is twenty million dollars' worth of timber, but the question for you to decide is, what are we to do with that timber? Shall we treat it as we should if it belonged to you and me as a purely commercial proposition, or shall we handle and keep it for the other greater reasons that outweigh a hundred times the commercial side? That is the question. When you get down to decide by your vote what we ought to do, there is going to be a single question for you to decide, and that is what do we want this forest for? What is its purpose? What does it do? How does it do it? How are you going to determine that proposition unless you are perfectly familiar with the reasons why it is more valuable for other purposes than for lumber? Now, let me address myself to that branch of the question a little. I would like to treat this body of splendid men, every one of whom

I am willing to concede is a larger man than I am in every way — I would like to treat this body as a jury for just a minute on this question of fact. What do forests do for the people of a State or for a country? Everybody admits that a country absolutely denuded of forest land is like a house without a roof — uninhabitable. That is your first proposition. The proof of that fact lies yonder in Northern China, where millions of acres of land, which was years ago just as fertile and as well wooded as the Mohawk valley and the Adirondack country, to-day produce not one blade of grass. The timber was taken away by the profligate Chinamen. The last tree was cut and erosion took place, and the valleys are filled with silt and stone; all of the productive soil washed away by the stream; hills torn and guttered, and eroded, and made unproductive and a barren land is that northern part of China. You know that. President Roosevelt sent a man to China to photograph that condition to show the American people that even the productive valley of the Mohawk, in a thousand years might be destroyed and made unproductive, if you cut the last trees all away on its watershed. Take the Euphrates valley in the East. There are men here in this splendid audience who belong to a society that I belong to, and often are told about the beauties of the valley of the Euphrates. It is a beautiful way, as you go back to Jerusalem. Green trees and singing birds and murmuring streams. That is another one of the poetic dreams of to-day. A thousand years ago that was true when that story was written that you are referred to. But, to-day, not one blade of grass grows in the Euphrates valley and it is a howling waste, and all because the timber was cut away. These are little touches of history to help us determine what we should do with our forest-covered lands. Therefore, if that is true, you have got to keep some forests. Now, every nation in the world that has had practice in this question knows that they must have one-fourth of the total area of their country covered with forests.

What for? First, because the forests in a way, large amounts of forests upon the high ridges, affect local storms and the rainfall. How do they do it? Winds laden with moisture coming up from the south come in touch with the cool ridges, condensation takes place and then you have a local rainstorm. That is the way it is done. Then forests are important as to the temperature of a country. What do people go to the Adirondacks for? And do you know how many go there? Nearly a million a year now; ten years ago, five hundred thousand, the railroad people told me. A million people from spring to fall go to the Adirondacks. What for? It is cool compared to New York or the lower lands in the South. The air up there is pure. It is beautiful. But it is

principally because it is cool that they go there. And do you know upon the upper ridges it is twenty degrees cooler than it is in the Mohawk valley? Why? I suppose some of those around this circle have given enough attention to this subject so that they have at some time tested the temperature of a tree when the thermometer stood at ninety. If you have not done so, you ought to. If you do that you will find that the tree is about twenty degrees cooler than the temperature about it. Why? Because it gets its life-blood from the ground, the water which starts up by capillary attraction, not through the great roots that hold the trees up, but the fibrous root growths. It gets its life-blood by capillary attraction clear up through the tree and that water is evaporated from the under side of the leaves of the trees. Keep that in your mind. Evaporation comes from the under side of the leaf — worth remembering, if you do not know it — and it keeps the body of the tree cool. Now one hundred and fifty miles square of Adirondack land, think of the billions and billions of trees twenty degrees cooler than the general atmosphere. That is the reason it is cooler up there. Forests are important because they modify the temperature. And then, a wonderful thing, in the forest in winter it is warmer than it is out on the open fields, and they modify the temperature that way. Now, that is one reason you want to keep before you. And then you want to keep before you the fact that they make a park, a playground, a health resort. And on the question of the health resort, with fifty-five thousand people in the State of New York afflicted with tuberculosis and 60 per cent. of perfect cures in the Adirondacks, can you measure that use up with the lumber proposition? If you kept it only for that purpose as it is, it would be a thousand times more valuable than it is for lumber. It makes a resting place, a recreation place, a health-restoring, a beautiful place to go in summer. And in a few years it will be just as valuable generally to the people of the State of New York as Central Park is in the city of New York to the people of that great metropolitan city. Since I have been here men have said, "Why, this park costs too much to carry on. Let us cut some of the timber and help to pay for it." Does it cost more than six hundred thousand dollars a year more, all told? If you take into account the value of leasing camp sites by the State, it would reduce that by one-half. What does Central Park cost the people of that metropolitan district? It costs them, at five per cent. interest, \$4,500,000 a year to carry it, besides administration expenses. Would they part with it? When that park was established there were no roads to it, there were no street cars, there was no way to get into it, and the people complained, so reads history. But by and by it became one of the most God-given health resorts that those people who were hemmed in on the East

side and other places had to go into to get a little freshness and pure air and see the grass and hear the birds sing. It is worth so much more in that respect than the ninety million dollars it is valued at to-day that the city of New York would not think of disposing of it.

What is the situation of our population in America? At our rate of increase in fifty years we will have two hundred million people. New York State grows faster than any other portion of the country. In that time then we will have at least twenty million people in the State of New York. The park lands in that time will be to those people what Central Park is to the people of the city of New York. Can you afford to put an axe into it? The crime of the centuries has been the destruction of many portions of that Adirondack country. I am not opposed to lumbering where lumbering ought to be done. I am not opposed to a man who owns a lumber property cutting it because he has his money invested, he has got to do it, but I think this State would do the greatest service to the people if it would take every foot of that land and put in into the State park and keep it and pay the lumber men all it is worth, and a little more if it is necessary. That would be the big thing in statesmanship. Now what else is this forest land good for? Of course it is good for lumber if you want to use it for that; that is conceded. But it is more important to us for one other reason than all the lumbering and all the things that I have mentioned. It stores up the water. My friend over yonder gave you a pretty good notion about that. But it ought to be thoroughly understood how it does it. It is a natural reservoir. What is the matter with the Mohawk to-day? My friend referred to that. I remember when I was in school reading a poem about the Mohawk, the wonderful, beautiful, everflowing Mohawk, and the author said he had stood from early morn to dark of night watching that beautiful river run on its way to the great old sea. I have often thought if the poet could have lived until to-day he would have been mightily chagrined to think that he ever thought that was then a subject for poetry. I have seen it and you have seen it during these later years when you could not only not float a canoe but you could not float a chip down it in August. Why? Why, the head waters have been cleared of the forests; the Canada creeks have had their flow diminished. The water storage that used to exist has been wiped away. Let us look at that matter for a moment. What is a reservoir? Something to hold water — is it not? — from which you can pay it out. How does the forest do that? Why, every leaf of the tree that retains water for a moment is a part of it, and every limb and the body of the tree itself. And when you get to the ground, all of the

debris upon the ground helps to prevent the water from running away, and between every two trees in the natural forest there is a basin in the ground caused by the roots taking and holding up the dirt and the soil and every one of those billions of basins catches and holds the water and allows it to sink down into the ground and the crevices of the rocks. And then if you scrape off the leaves and expose that which is underneath, you will find something else, and that is the humus. That is a greater and better substance for holding water than any other known substance — made there through all the years from decaying vegetable matter, the spring over the forest floor. And then every root that runs into the ground makes a channel down which the water can seep and get into the crevices of the rock. And by all these processes you keep the spring running on the mountain side, flowing with water all the year around, and that keeps the little creek, and that the larger one, and that the river running, and all the year the rivers are half-bankfull in a primeval forest.

Now you cut away the forest and the stumps rot out, the basins are broken down, the debris is always burned up, every element of God's reservoirs removed, and you have a condition like the roof of this building. A great storm comes, it beats upon the roof and upon the mountain side. In both places it runs readily to the gutter. The storm subsides, the flood goes down, and then a bare river bed in July, August and September. There is not a lumberman in the State of New York, nor any man of sense that does not know that there is not as much water now in any Adirondack stream as there used to be. They had to build a reservoir on the upper Hudson to catch the water to help out the people at Glens Falls, and for lumbering and power purposes. That is a splendid thing to do but it would not have been necessary if the natural reservoirs had been preserved. We never used to build big dams when I was a boy. We had streams that overflowed with water all the year 'round. Water must be continual if you are to have a productive country. You cannot have it half the time and the rest of the time no water. Have you gentlemen studied, at all, the wonderful effect of cutting timber from the western range, and the eastern range of the United States? Don't you know that the region between those two great chains of mountains, the arid region is widening instead of narrowing? As Mr. Smith said the other day the water is receding further and further from the surface of the earth. Don't you know that it is because of this cutting of the forests? Oh my friends if you think that you can have a productive land without a water supply and without a reasonable amount of forests, you are dreaming about that. In the Adirondack country there are more streams

and lakes and water power than in any other land of the United States. That water power if you protect it with your forests and build reservoirs and invest money and employ labor and produce power is worth more to the people of the State of New York than the coal lands of Pennsylvania are worth to that great State. You have no right, and history has amply demonstrated that fact during the last two thousand years in the forests of other countries, to denude any part of this forest land more than it is now. My friend Meigs says to the Committee. I want to protect the forests. I want to protect it for its scenic value, for its beauty. That is the paramount duty, he says. But then, he said, he wanted to cut it carefully; to use it economically. I replied to him in my report to the sub-committee that if you cut one tree in the forest you let in a little more air, a little more light and you get a little more evaporation. Now you cut a thousand trees, and you have multiplied that by one thousand, and so on, to the end. I called his attention to the fact that in the *open country* there is ten times as much evaporation of water as *in the forests*, and that if you trim the forest out and thin it too much and let the air through it, there is much more evaporation, which is part of the water proposition.

The only thing that I regret in this connection is that I could not have brought here, some evening, pictures of the forests, the actual thing, and you could have seen all of these results from cutting and from non-cutting; the effect upon the stream; the depletion of water; the erosion of the hillside; the loss of soil and all of these things that go into this great question as to what we should do with our particular forest. Now keep this in mind: what Germany may do is no criterion to us in this forest problem. What France may have done is no criterion, except the fact that France's history teaches us that we must have a forest on the hills. After the French revolution you will remember they pillaged the forests of France. They cut off from the hill tops and the sides of the hill, and the sides of the hills eroded and France has spent millions of dollars since to take out the silt from her rivers and make them navigable, and it has cost France \$34 an acre where it costs us \$8 an acre. Germany has kept one-quarter of her country covered with forests even thicker than ours, because of their system and their need and the particular conditions. That can be done, but that is a commercial proposition. In Germany they do not try to operate on the question of stream-flow so much, but you notice in Switzerland they keep a solid mass of forest on the top and sides of the mountains to keep the water. There is no State in the Union that has a proposition like ours. We have a park and we have ten millions of people every one of whom can

get into that park in ten hours. It outweighs it seems to me by 100 times the lumber proposition. I have no patience with a man who is so devoid of public interest that he will rob the present as against the interests of the children of the future. What right have you and I to bring children into the world and not leave this State better than it was when we found it? Ever since the Pilgrims landed at Plymouth they have been taught to cut the forests because they are in the way. That time is past. That line has been passed over and you have got to replant and create forests and build up the thing that protects the water of this country. This thing cannot be done by what they call "scientific lumbering." You cannot go into this forest and pick out your trees and this commission cannot sell one to the practical lumberman unless he cuts down to 12 inches at least. There is not a lumberman will dare to tell this body of men that he can go around and pick out the mature trees and make it commercially profitable. I have been a lumberman and I know better. I do not believe that George Underwood, who is interested in lumbering in the states, and who owns thousands of acres of land himself to-day and is interested in this question naturally, would claim that could be done, by the man with a canthook and an axe, and that he now becomes a millionaire by good honest business. If you were to cut the forest "practically" as they say, you have to let a contract that has some money in it, and if the State tried to do it, it would be an abject failure. Nobody but the most practical lumberman could handle this proposition and no practical lumberman would take a contract to pick out a few trees here and there.

It will never come to that. I predict to you that it will never come to that, because the people of the State would never allow it if you put it into your Constitution. May I say, without being personal, that I think I know the sentiment on this subject of the people of the State as well as any man living? I have faced more often — and I have talked to more of them in every nook and corner and village and cross-road of this State than any other man. And I tell you that the people of this State do not propose to have one tree cut out of that forest for another twenty years. Now Mr. Angell says that I went to Ithaca and spoke at the dedication of the Agricultural Hall, and that I advocated lumbering. I did go there a year ago last June. I did talk upon the question submitted to me, looking ten years ahead in forestry — in conservation in the State of New York. I had come from the meeting of the subcommittee of the Camp Fire Clubs of the Adirondacks, and those people finally had yielded so far as they were concerned to the proposition presented by our good friend, now deceased, George Malby, and our splendid friend, now deceased,

Edwin Merritt, the dominant political factors in that country, who said, if you will not allow some cutting up of those lands, you will never get another dollar to buy land. We had been prevented from acquiring land because of that fact, and the dominance of these men and their friends in the Legislature. Mr. Agar, the president of that great Society for the Protection of the Adirondacks, finally yielded and said, "I object, but we will have to do it or we never can add another acre," and I, representing those societies and at their request, through their committees, in my talk down yonder, said the Constitution should be changed to permit the sale of these parcels of State land outside the park, except around in Lake George, and also the leasing of camp sites in the State preserve. The change in the Constitution should also permit the conducting of conservative lumbering on the land that *should be lumbered*. The land that should be lumbered should be determined, if at all, by some competent authority. That much I yielded under the pressure of these two societies, believing at that time that unless we did, we never could get more land to add to the preserve. But I think that this Convention, with this Commission and with this power, that sentiment will be created in this State that will compel the Legislature to make a donation of money from the State fund for the purpose of acquiring land. If each man does his duty in that respect, a public sentiment will be created that will compel that to be done. Therefore, upon that question, if there ever was reason to lumber, it is past, under what you have done in this resolution so far. Now, gentlemen, I have tried, in this brief space of time, without any illustrations to prove it — and that is what we ought to have — we ought to have the facts on a screen before us to look at — that is the best evidence; but without it, these are the reasons, in my judgment, why we should not put into this Constitution Mr. Angell's proposition to lumber in the Adirondacks. Mr. Angell is right, as I told you, about the camp sites. It is done in other States; it is done in the national forest; it is done in Germany; but I am not contending for that. We should have this road for the reasons I have stated, and that far he is right. If I had time, I could tell you why the broad proposition of roads would not do.

I will tell you why. A commission — if you will bear with me — would be flooded instantly with applications to put logging roads, and crossroads and convenient roads everywhere through the State forest. That is why. I have been through it. I will cite you a case. Timothy L. Woodruff — just below his camp at Lake Cora, seven miles from Raquette, in the heart of the forest of the State, Township 40 — there was a grand piece of virgin pine timber of twelve hundred acres, hemmed around by the State lands, and an application was made to the Department to give

them a tote road — a tote road, to take their stuff in there. All they wanted to do was to get in their supplies, across State lands. I submitted it to the Attorney-General, stated the facts, that here was a piece of land that we would practically confiscate if they would not let them across State lands. The Attorney-General said in his opinion under that Constitution and this state of fact the Department has no power to give him a right of way for his purposes. Then we proposed to Mr. Woodruff that the road run down by his place and along Summer stream to that tract or piece of land, and he strenuously objected to that, because the lumbering men, the lumber-jack, a large number of whom get tight now and then, would come down by his place and annoy the people. So we determined to go down the Morgan road and go in from there, which was no farther across the State land, and the road was made. When the lumbering was done, Mr. Woodruff acquired the land on the private tract and applied to the Commission for a road to get to his property along the former route, and I said to him, under this Constitution, we have no authority to build a road for the convenience of anybody, but only for necessity, if at all, and you have got the Morgan road and the tote road, and it appears you have only a little farther to go around, but he contended that under the law, and the provision as to the reservation of certain lands for school purposes and other purposes, if you will remember, that they could build that road, and he got the proper town authorities to pass the proper resolution under the statute and he commenced an action and went to the Court of Appeals, but he did not get his road. That is one instance of how quickly you will be applied to for a road of convenience and for lumbering purposes, if any one wants a road, because it is a little farther around the way they have to go at the present, and they will base that upon necessity. The Barber Company applied and I told them you are hemmed in, you can go around where it is a little more hilly. But time after time you will find them crying for a road for logging purposes purely and if you give this Commission the power to make roads, gentlemen, the Commission will be flooded with requests, and if they are not up in their business they will be granting them everywhere and so destroy your forests. That is the reason I am not for it, gentlemen, but if you put in this Constitution a provision to build a specific State highway from Old Forge over to Saranac Lake for the benefit of the protection of that vast amount of forest land that you can hardly reach in case of fire and make this a proper way for the people to go and see their forests, that is another proposition entirely. That is legitimate.

Mr. Angell — I would like to ask if a provision for highways through the State forests in the discretion of the commissioners would include logging roads for logging purposes only?

Mr. Whipple — You can get a highway through probably with the aid of all the people who want it up there and who are always organized for what they want under the guise of this being a highway for the purpose in view, and yet the road still be a log road. Unless you circumscribe the power and fix it it is a dangerous thing to do.

Mr. Blauvelt — If the power to designate the location and to construct the highway is left to the State Highway Department, is there any danger? That is, if these proposed highways are built as other State highways are built, out of the Highway Improvement Fund, is there any danger?

Mr. Whipple — My answer, Senator, would be that that leaves it wide open to the discretion of the State Highway Department. We don't know how much the present State Highway Department or some other succeeding department will know about the necessities of this particular problem. We don't know how much they would be pressed. We don't know how much politics or political force would be brought back of it, and I think it is too broad a power, but if you say, as you do by your resolution, build this specific road, that ends it. Now, I am going to admit this, to be fair. I can see how for many purposes, if you build a trolley line from North Creek to Lake Henderson, because of the large mineral deposits left there, which may be opened up, that commercially it would be a wonderful thing to have trolley roads; but the question is, is this a commercial proposition or what I have been trying to tell you it is? Are the interests of the people in these parts and are they purposes for which they ought to be used less than the commercial interest? What are dollars and cents against the lives of sixty per cent of the people who are afflicted with tubercular trouble and go there? What are dollars and cents as against thousands of men and women who are benefited in some respect by going there in these pristine forests. It has been hacked and starved enough, it seems to me. You want to build it up instead of tearing it down. You want to acquire the land. You want to reforest it not with a couple of million trees a year, but one, two, three, four hundred million trees a year. Germany reforests forty-four thousand acres a year. We have reforested a few thousand acres. It is no longer experimental. It is a fixed thing, because you have got thousands of years back of it which prove it in other countries. What the people of the State want to do is to rise to the occasion and do something, and that is the reason I was willing that the proposition should be put in this resolution to make the State Legislature give five hundred thousand dollars a year. Don't you understand that the forestry department can do nothing unless it knows beforehand every year how much money it can have? Why raise a hundred million trees and have a thousand

dollars to plant them with and so let them perish? They have got to know. It is a continuing business. They have got to have money fixed for it, and oh, my friends, with all the millions that have been given for canals and roads, splendid purposes as they are, they do not transcend this question of building up the forest interests of this State for all the reasons I have given, because finally your agricultural lands will perish, not in your time and mine, or the next generation, but they can perish for the want of forests and the want of water. Therefore, the water proposition comes next to your agricultural interests, and just before the water proposition comes the necessity of your forest cover. This is the heart of the question. This is the biggest question. As Theodore Roosevelt said in that wonderful Congress in the White House, when the Governors were together, at which conference it was my good fortune to be present,—that the biggest question, although we are building the Panama canal and extending our railroads and increasing our productive resources everywhere, the biggest question that the American people have got is the saving of their forests — and it is for this Convention to solve this question concerning our forests, and our water supply.

Mr. F. L. Young — It has been a great privilege to listen to the magnificent address of Mr. Whipple, and I have been glad to sit here as a juror, as he has requested us, and listen to his argument which he has advanced as to what is the right thing to do. Last Friday night I made a statement on the floor that the Adirondacks, and the various forest preserves, are unknown lands to most of us. In a general way we know about conservation and we favor it. On this particular proposition, included in section two, there are a number of us who want some information before we vote, and with Commissioner Whipple's permission, I would like to ask one or two questions to which he may address himself, and the other speakers who follow. In this Convention we have a hundred and sixty-eight men, and I suppose I am making a very liberal allowance when I say that probably there are not twenty-five men of the one hundred and sixty-eight who are competent to talk on this question. I understand the underlying proposition here to be that the forest must be preserved for the storage of water. I think that does not need to be debated. I think every man in this Convention is satisfied on that proposition. As to the second proposition, the maintenance of the forests for the purposes of beauty, we are also satisfied. But I would like to ask Mr. Whipple whether or not it is possible to make this great park, so valuable in many ways to the people of our State, more valuable to the people, and that is the reason I ask the question, and I ask Mr. Whipple to continue in his address and say why it is not desirable that more roads be built through this forest preserve so that all the

people in this State, now and hereafter may come into some of the advantages of that proposition?

Mr. Brackett — Mr. Chairman, would the delegate permit a question?

Mr. F. L. Young — I will permit a question, but I simply have the floor for the purpose of asking Mr. Whipple a question.

The Chairman — Is the delegate addressing and asking the question of the delegate from Westchester or Mr. Whipple?

Mr. Brackett — The delegate from Saratoga is addressing the Chair as he ought and has asked if he may ask a question of the speaking delegate, as he cannot ask one of the delegate who is not speaking.

The Chairman — Will the gentleman from Westchester yield to the delegate from Saratoga for a question?

Mr. F. L. Young — I will yield, but I will not guarantee to answer it.

Mr. Brackett — I would like to ask if he comprehends in this question the making of such roads as will enable a man over sixty years old to get through, or whether he prefers to leave it so that no one but an athlete can get in at all and if the roads are for the benefit of athletes.

Mr. F. L. Young — Inasmuch as a large proportion of the people are over sixty years of age, I think it must be comprehended in my question to Mr. Whipple to be for all the people.

Mr. Brackett — Does the gentleman believe that a man sixty years old, who is naturally getting down a little in his strength, ought to have any benefits of the Adirondacks, or whether it ought to be confined to men under sixty and who don't need it?

Mr. F. L. Young — I think the question answers itself. What I have particularly in mind is this, that the Adirondack Preserve is so located to-day that the average person cannot reach it; they cannot get into it, because it costs more or less money to get there.

Mr. Whipple — Mr. Chairman, with your permission and that of the Convention I would be glad to answer the question of the gentleman from Westchester. I think his last words answered the question, when he says he does not know anything about it, and I will tell you why, and it is not an unenviable position, either, because it is natural. The truth is that any person, whether five years of age or even sixty, or even sixty-two, can get in and out of the Adirondacks in most of its places. To-day anywhere from here to Lake George will lead you into roads which take you through Keene Valley, to Ausable Lakes, to Lake Placid, to Saranac, to Pig Tupper, to Meehan Lake, to Paul Smith's, and anywhere all over that country. Now, from the north side there is a road running up through to Paul Smith's and Meehams and

from Canton, St. Lawrence, you can get in that edge of the forest everywhere, then up through Racquette river, and on through to Piercefield. There is a road that will take you up to Big Tupper and the only place that in my judgment needs a road is the route up to Fulton Chain. There is no road there that you can travel. There has been a road, a Tote road, from Old Forge to Racquette river, or near there, and when Vanderbilt and Morgan and Woodruff got in there, it was cleaned up and to some extent used. That is the heart of your forest, and you have got a large circle of roads to let even Senator Brackett get in there if he prefers to, with his automobile, or in any other way he desires to go.

Mr. Brackett -- I cannot believe that a man nearly sixty or about sixty-five will walk along over a stream or make a carry, as he must. I am not asking that they be able to get in with automobiles, but I ask how can they get into the heart of the forest, if they are compelled to walk and to carry. I don't mean on the edges, but I mean to get into the heart of it, where the juice is.

Mr. Whipple.— My dear Senator, if you want to climb Whiteface, from Lake Placid, there is not a place but where women and children who are not strong can go, and I think possibly you could go. You can go up to Mount Marcy from Ausable lake. There is not a mountain in the country that is any more accessible than Mount Marcy in the Adirondacks. When you referred to walking and to carrying, it is but a short distance and you throw your canoe over your head and shoulders and carry it over. That is the way the guides do it. You can go anywhere that I speak of except this place I am telling you of and you can get there by carrying your canoe a short distance; but if you have a fire and you want to put in 500 men it would take you two days to get them in there and then your forests are gone, and that is the reason I want it. Now from up the Racquette lake, from Potsdam, as I was telling you, you can go clear through. Now you go from Watertown up on that side and you have got a railroad that takes you to Benson Mines and roads that you can go on to Cranberry lake, the biggest lake in the mountains. And if you want to go over to Robin Hood on the Adirondack road there is a trail through there from Racquette lake. Now don't let any one get it into their head at all that for the people's use you can't get in. You can get in if you don't follow this road up to the Fulton Chain, but you would lose very much in the way of beautiful scenery if you do not go that way. That is the reason I am for the road, if that answers the question.

Mr. F. L. Young — I would like to ask the Commissioner another question, to make it more clear to me. There isn't anything about this -- I confess I do not know anything about this,

but, Mr. Chairman, I want to ask this question. Is it not true that the road described by Commissioner Whipple and the lakes described by Commissioner Whipple are private roads and private lakes, and that the roadways which you have described do not lead to the heart of the forest at all, and that to reach the heart of the forest to-day is really, so far as the expense involved is concerned, practically impossible for the man of average means. I am referring to the southern part.

Mr. Whipple — Not at all. Let me tell you something. My three sons and I a year ago last August, two years ago now, went from Salamanca, 300 miles south to Utica, to Old Forge, went through that forest for fifteen days, camped by the wayside, staid at hotels three nights, had sleeping cars back and it cost us \$27 apiece. It is not beyond the means of a poor man. Last year twelve of us in automobiles went up through that country for fifteen days, traveling a thousand miles, and it cost us \$19 apiece. That is cheap enough, and you got everything. There is not a spot that I know of in the Adirondack country that you or your family cannot go to if you want to take the trouble to do it, except through this country. Your children and your wife might not care to canoe through the Fulton Chain and Blue Mountain lake and Racquette lake. They can go down into Blue Mountain lake and from North Creek up to Indian lake, and if I wanted to name them there are hundreds of roads. Go to Aiden Lair, go to John Anderson's town, Newcomb; anywhere from North Creek, any way. Plenty of roads, but this one place — through the heart of your forests, no trouble about it. You can go down to Lewis county, Mr. Senator, and you can go up through there on roads, not automobile roads, all of them, but you can go. Thirty years ago I used to go in from that side to Beaver river and drove in with a team, with little comfort. There is no trouble about it. They are cut up enough.

Mr. Brackett — Mr. Chairman, I hope the gentleman does not think I want to go in. I live in Saratoga and do not need to go in, but I wanted it for other people who do not have the privilege of living where I do.

Mr. F. L. Young — The Commissioner has answered my question but I still think from his answer that it is practically impossible for the man of average means to traverse this country which you have described. You have not included in your estimate the cost of your equipment, your canoes, your automobiles and other things that a poor man cannot get.

One other thing and then I have finished. I think the Commissioner misunderstands the purpose of my question. I am not asking anything — I am asking for information. I agree with

Senator Brackett, although I am not sixty-two — I may look to be seventy-two — I am not ready yet to be asphyxiated. I want to ask a question brought out by the last sentence in this Proposed Amendment to Section 2. Why is it necessary that the State should go to the expense of removing dead timber for which I understand compensation can be had, if the Commissioners proposed by this amendment are competent to sell it? I want to know also why it is that it is not possible, under proper regulations, police regulations, to open these forests for camp sites at a price that the average man can pay.

Mr. Whipple — If the Convention wants to indulge me any longer in answering questions I will be glad to do so. On the first proposition, the way you have got it worded in your resolution, to take out dead and down timber for reforestation and protection of the forests from fire, with the provision against using or selling it, seems to me to be so silly that no practical man, if he really understands the situation, could vote for it. He could very well vote for it if you do something to prevent the Commission from burning it up without letting it rot, piled up or throwing it into the streams to clog the streams. Now what a silly thing to think that with that provision in the Constitution you would be in any danger of having more timber burned or anything of the kind if you wanted to dispose of it for domestic firewood purposes to the resident people! Now if you are not familiar with that you should go up to Long lake, for instance.

There are five or six hundred people up there on land acquired before the State got it. Surrounding them is the State land and they cannot cut any wood, and the cartage makes the coal thirteen or fourteen dollars a ton at Long lake and there are millions of cords of dead wood, that it would be better to remove than to leave in there to-day and they cannot have a stick of that wood and they must pay fourteen dollars a ton for coal. Now they are a part of the citizenship of the State and they are entitled to some consideration especially when you have to throw the wood away or burn it up. The dog in the manger could not eat the hay and he would not let the cow eat it. Now the most intense friend of the forests must concede that there would be no danger if this Commission that you have all faith in, of nine men, should have the right, when they thought it necessary, to take out dead timber — dead, not live timber — and, by the way, there won't be much taken out because there will not be great necessity for it, only in a few places — but if they have the authority to sell for twenty-five or fifty cents a cord to the resident rather than destroy it by fire, helping the citizens, and getting a little money, there cannot be any impractical side to that, can there? And there cannot be any danger? That is the question of your firewood, and that is

the proposition that I desired to present, the amendment "except for domestic fire purposes," that the Chairman spoke of and that I had in mind all the time and that was what I suggested to the committee, but somehow they seemed to be so obsessed that they could not see that thing. Was there another question? Camp sites: You all know what I think of camp sites. I have urged them because I thought it would give a chance for the common man to use the forests. I believe it will relieve from fire danger instead of adding to it. It is the practice of all other states. Germany houses in her forests 197,000 people. They live there, and it is a benefit to the forest. You know very well that if you had a 500 foot camp on some stream you would see to it that there were no fires there, although it might start half a mile away but you would not want it near your place. There are no fires on Long lake where 500 people live. They have their own property to take care of. I have fought that out with the committee but they thought they knew more about it. The experience of Germany leads to this practice. You would get a needed revenue and you do not hurt anything. They ought to have not to exceed half an acre — they have all the forest in back of them — I am answering your question. I have abandoned the proposition, but I am telling you what there is to it. In regard to what opposition there may be to the proposition of Mr. Mereness? I must say that I was impressed when I had the privilege of discussing this matter with the fact, I think somebody said there were eleven hundred detached pieces of property of only an acre or a fraction of an acre or a few hundred acres and I would be glad to know what opposition, if any, there may be to Mr. Mereness' proposition.

The Chairman — The Chair thinks that will be covered by future speakers. There are going to be seven more speakers on this camp site proposition.

Mr. Reeves — Mr. Chairman, it certainly has been interesting to sit here as a juror in regard to this matter. Sitting here as a juror it has seemed to me very clear that one thing that this Convention must not do is to let any selfish interest go into our forest preserves. The lumberman, the man with a commercial interest, may go there with the best of intentions, with the highest ideals and the desire to protect that forest, but his personal interest will ultimately, in spite of himself, and, I believe in spite of this good commission of nine, will be an injury to the forest. But what I want to ask the gentleman, Mr. Whipple, is, if you leave it to the commission and do not have that selfish element there may it not be that within the next twenty years because of the growing up of the forests and the coming of underbrush, and the changes that are bound to occur, roads and means of ingress

and egress through that forest may be needed that we cannot contemplate to-day and would it not be better that that impartial commission, with those nine men not paid for their work, with the best men that could be put there and nothing that is of a part of personal interest to change the situation, to leave with them to make such roads as may be necessary? Would it not be a safe thing for the Convention to go somewhat beyond simply pointing out the one road in this Constitution and leave it to the gentlemen of a commission like that to put other roads when they are really needed there for the people's recreation, for the people's best use of that forest?

The Chairman — Does the gentleman from Cattaraugus care to answer the question of the gentleman from Kings?

Mr. Whipple — I have answered that question, it seems to me. I thought I had. I am very diffident about saying any more. I have talked to you so much. But I want to accommodate the gentleman and my answer is this, that it is no argument to me to say that these gentlemen are unpaid. That, to me, is an element of danger. I don't know whom they are going to be. I don't know what interests they are going to have. I don't know who is back of them. But I do know if there was a single man there who would take the responsibility he would be mighty careful what he did because the eye of the State is on that man; and you have stated a proposition that would add force to my opposition to this nine-headed commission, unpaid. But we have passed that and we have got the commission. I am not objecting to the commission. But I think whenever you open up a proposition that leaves it indefinite and where there may be exercise of judgment, perhaps with a lack of knowledge, you have produced a very dangerous crack that the commission might fall into.

Mr. Aiken — Mr. Chairman, it seems to me that the great danger to the forests in the Adirondacks is the question of fire, and if you allow no cutting at all in the Adirondacks, under the system that is now in vogue in this country, you are adding danger to them, because we have not scientific forestry as they have in Germany. As pointed out, every stick, every limb of the tops are removed, and after the cutting they have a clean forest. It is not so in the Adirondacks. The top and limbs are left, they are not taken out and of course they become dry and a dangerous place for sparks when there is a dry time. I have had some experience in that line, right on the edge of the Adirondacks, where mature timber was taken out, but a fine growth of young timber left. But a long dry spell came, in 1903, and the fire cut into this tract although it had been several years since it had been lumbered and on account of these brush heaps through the tracks

the whole thing burned up, green trees and all. Of course where you don't have brush heaps the green forest will not readily take fire. It is only when you have the material to make a fire. And of course the question of mature trees, that will not necessarily put that into the Constitution, but it will have to be left to the judgment of men. I take it that this Constitutional Convention is constituted of mature men and yet they are men from the ages of 25 to 75, and so it is with trees. One man would say a tree is a mature tree at fifteen years or they may be mature when they are a hundred years or over, and you have to leave it, after all, to human nature as to saying what are mature. I look upon it a good deal as the boys did who went down to the beach to swim and a young lady motored down with her young man and they got out and strolled around the beach and the young fellows remonstrated and said they wanted to go in swimming. "Oh, well," said the young lady, "never mind, I will turn my head. I won't look." The boy went back to his fellows and told them what she had said and they deliberated and finally sent back this message: "The kids say they dassent trust her."

Mr. Dunlap — Ever since I was a young man, a good many years ago, I have gone into the Adirondack forests almost every year and most years two or three times, staying there for considerable periods. I have not gone along the beaten trails and the good hotels, but I have got back into the woods where they were lumbering and where we could catch fish or shoot deer or game birds if we wanted to do it. I have watched the forest with a great deal of interest and when the Adirondack League Club, which cut off the territory belonging to them — some 96,000 acres — they didn't cut it all — they cut the larger trees, were careful to have that blocked properly, and did everything they could to conserve and protect the growing trees. They tried to avoid fires and they succeeded. That territory was cut through about seventeen years ago. I was over it then time and time again, while they were at work at it, because I have gone in usually in the vicinity of Spruce lake and the West Canada lakes and the West Canada stream. I observed the condition of the woods when they got through and I was in there a year ago and went over that entire territory for two weeks; I was up and down these various streams, across the mountains, at the West Canada lakes, Spruce lake, the outlet, nearly down to Morehouseville, and through their entire territory, and I found there that where the trees had been cut there was now a very fine growth, good throughout, good sized trees, many of them large enough to cut now. I want to say, however, that I am in accord with the provisions of this section. I came here first and introduced one of the Proposed Amendments which provided for cutting mature timber. In addition

to my experience in the forest for all these years, I have taken a great interest in studying the forest propositions, reading the reports of the National and State governments from one end to the other, and I have been particularly interested and I have observed the effect of the cutting in different localities in the forest. Around the Adirondack League Club plant, where it was cut conservatively and properly, I could see no substantial difference in the condition of the water-flow a year ago from what it was before they cut at all; but in other sections, and I refer particularly to the outlet of Spruce lake, they cut off the timber slick and clean; that was cut off, and flooded it down the stream, and I find there that the little streams that before the trees were cut were big enough to make trout streams, were practically dry. That was the result. So that even in seventeen years, or in the cutting of that particular territory, it showed a very decided falling off in the water supply, while in the West Canada Creek country, that is Upper West Canada, I could see no substantial difference in that, or in the Beaver Pond stream, or any other streams in that vicinity, because the forest is practically as good as if not better than before the trees were cut off at all. Then there were a great mass of high trees, great big trees, and the circulation of air was all through there. The trees were quite a distance apart, while now, where there was one large tree, there are six or seven good-sized trees growing; so that I became convinced from what I have read, what I saw in the forest and what I have learned from talking with practical foresters, that it was a good thing and a proper thing to cut the mature trees. Every man who came before the Committee — and, by the way, nearly all of them were invited by the Committee to appear — nearly every expert, national or State, or from other States, who came there personally, or who wrote to the Committee, almost always agreed and stated that to cut the mature trees was proper forestry and ought to be done, after, of course, a proper survey and a proper inventory of our forests and a proper division, and they claimed that unless,— or, they claimed, rather, that if politics be kept out of the department, it would be a good thing in more ways than one to cut the mature trees. They stated that trees could be removed as they are in the national forest and no material damage done to the forest, if any, and at the same time, it would produce a revenue. My friend, Mr. Aiken, has just said that mature trees means trees from twenty-five to a hundred years old. Now, I happen to know very intimately a forester who has been at work under the United States government for a considerable number of years. His business has been to mark mature trees for cutting under the Pinchot system of national administration of the forests, and he tells me that they become so expert that

they can go and pick out a tree, and nine times out of ten he can tell within two or three years of the time that tree will die; and they mark those trees that are mature by their appearance. He says that he can tell by the looks of the limbs, of the bark on the tree, and by its general appearance, whether it is going down, or whether it is still vital and continuing, and they cut — or they go and mark every tree, one by one, with a mark that cannot be effaced from the log that is cut off, or from the stump that is left, the mature tree that is to be cut. He said a number of years ago, in order to test that theory, before the trees were put under the Pinchot rules, that they marked a large number of trees, to test the idea as to whether they could tell accurately about how long a tree would remain after it was marked. And they marked some seven thousand trees in a forest in Wyoming. Five years afterward they went into that forest, went over those trees, and found that more than two-thirds of them were absolutely dead. A considerable number of them were down and less than four hundred showed any substantial vitality at all. There were a few of them — not a considerable number that had a few live limbs on them, but the large majority were absolutely dead, and they determined from that — and that was one of the controlling features in establishing the principle of cutting or marking the mature trees and removing them in the national forest.

After listening to the gentlemen who appeared before the Committee, reading what they had to say, and talking with the people, reading the newspapers, I came to the conclusion that a provision of that kind in the Constitution at this time would simply defeat the provision of the Constitution that we proposed to submit, in all probability. There is a very great prejudice among the people and among the newspapers against doing anything in the forest. They are constantly talking about the lumbermen trying to get in, or the lobby that is trying to do something or trying to influence this Committee or this body to put in something in the interest of the lumbermen. I have not seen a single indication of that. In fact, some of the lumbermen who talked were more opposed to it than some of the scientific men, if they are scientific. My friend, Mr. Whipple, says there is no such thing as scientific forestry. Whatever it is, whatever we may call it, it is a system of managing forests, of building them up, that has grown up within the last few years. There is certainly a great deal more information in regard to the management of forests and the proper control of the forests in this country now than there was a few years ago and these gentlemen who have given this subject study almost invariably said that scientific forestry should be applied to our State forests. But, as I say, the people have not yet been educated up to that point.

It does seem a little ridiculous that we should go on and allow these trees that foresters know will be dead within five years to stay there and fall down. And when they do fall down they do not go down on the ground and rot and make humus, as some have told us, but they stand up on the big limbs that have grown upon them, as a fire menace. Recently I had an opportunity — this spring, this summer, since this Convention has been here — an opportunity to examine two pieces of land that I wish this Convention could see. One is a virgin forest of one hundred and fifty acres on Sacandaga lake right back from the shore. It has never been touched and, so far as known, it has never had a fire in there at all. It is absolutely as nice virgin forest as you could find anywhere. Immediately adjoining it, is another parcel of one hundred and fifty acres and I went through that forest with William Harris who has been a lumberman but who is now entirely out of the business. He took me over there and showed it to me. Twenty-five years ago he lumbered the one hundred and fifty acre tract and took off everything that was big enough to make a log. The other tract has never been touched. We went over through there and without first telling me which was which — although I could guess at it by the size and the condition — I found that there was more good timber on the one hundred and fifty acres that are there now that was lumbered twenty-five years ago than there was on the other. The tracts are exactly of the same character, both along the edge of the mountain, both along the flat along the lake, and so far as soil was concerned or the conditions, they were practically the same. In the virgin forest we had to climb over trees in every direction. They were down everywhere, fallen down, trees that had lain there, some of them for years and years, others down this year; and there they were, standing up as a menace to the forest, dry as a tinder. On the other hand, where they cut off the timber — and he did not lop it as they have to do under the law — that was all down except the top and they went down and they cut the rest off practically — that is all growing, all that splendid great tract of nice trees as fine as you ever saw; while in the other part, the part that has never been touched, are a great many big trees. Some of them you could see by looking at are ready to die, a great many of them, and others fallen down all over the territory.

Now while I say I am in accord with this provision, I believe the time has not come for scientific forestry, and yet I believe when the people are properly educated to that situation there will be no opposition to doing it on the same basis that other states are employing and as the national government in managing its forests. It does look rather ridiculous, as I said before, to allow a whole lot of timber on this great area to fall down every year and remain in that condition. The President of the Forestry College at Syracuse says that we could take out \$1,000,000 worth of lumber every

year. Now, whether that is high or whether it is low, we could certainly take out some. Of course, no one would attempt to take it out upon the top of a mountain nor upon the steep sides. That is not forestry. That is only cutting off an area of land, and it is not designed or intended by scientific forestry to denude the forests but rather to build them up, and with the funds that would be realized from the forests, it does seem to be good, practical sense to take that money and reforest the lands and buy other land, particularly in view of the fact that we have only reforested 3,500 acres, and it would take us years and years to ever reforest the lands that have been burned over. Now there are two matters that I am in hearty accord with that are not in this Proposition No. 2, and I so stated in the Committee when I signed the majority report, and that is the camp sites and roads. Now I have known quite a good many people who were anxious to get camp sites in the Adirondacks because of sickness in their families. They cannot go up there and tent; they cannot go up there and pay their expenses at a hotel. The expense is too much. They can't go there and live out in the forest in a little tent. They have got to have something permanent and if they could have a place here or there on State lands, it would certainly be to the interest of a great many people. Wealthy people can go up there and buy a piece of land and pay good money for it and build a great magnificent camp, but the poor person cannot do it. It has practically resolved itself now into a beautiful park for the wealthy and they object very strenuously to any one else coming in anywhere near them. They don't want the common people there at all. I am not inclined to criticise them because if I had a lot of money and a very fancy place I suppose I would be just like the rest and would want the other fellow to keep out of the way and let me alone.

Another thing is the roads. My distinguished friend, Mr. Whipple, says we do not need any roads. He gave you several instances where there are roads and that is all very true. Now take the southern part of the forest, for instance. There is one road which runs from Herkimer county up through Morehouseville and to Piseco, and then to Lake Pleasant, Speculator, and down to Wells. There is another road that runs from Northville up to Wells and meets this same road and another road running from Speculator over to Indian Lake and those are the only roads in that section of the park. You can go to Piseco and go, where I have gone for years, in to Spruce Lake by walking. You can take the trail; sometimes it is in fair shape and sometimes it is not. You can walk in there twelve miles. If you want to go over to West Canada Creek you can go five miles farther and if you want to go to West Canada Lake you can take your pack on your back and walk twenty-five miles. If you want to go in the other way

you go from Speculator into Perkins' Camp and walk twenty-seven miles where there is no trail except deer trails. Now that is the only earthly way you can get in there. Certainly West Canada Creek, West Canada Lake, Spruce Lake and those other lakes around there are among the finest in the whole Adirondacks. Comparatively few people go in there because they can't get in. If there were an opportunity to put a road into Piseco across that country, there is a great country that you would open up there. As it is now, to go from Piseco to the lower part of West Canada Creek you have got to go nearly a hundred miles, away down to Morehouseville, over an awfully poor road and away up around on the other side and come in by Hinckley and off through there. So that the only chance that a man that is over sixty — I am not over that and can get in there yet — the only people that ever come in there, are young, athletic fellows, and fellows a little older who still think they are young. No one else ever gets in there. Up to three or four years ago there had never been but one woman into Spruce Lake, a distance of twelve miles, because the road was so very steep and so very bad. They could easily make a decent road. but you cannot get in there, into that section of the mountains, at all. You can get in up around Piseco but so far as fishing or hunting or anything of that sort is concerned, you might just as well stay down in the Mohawk Valley. There are hundreds of people camping along, with automobiles standing along the road everywhere, and the only chance of utilizing it or getting any pleasure out of the Adirondacks in the line of fishing or hunting is to get back somewhere in there. It is true that if you should open up those roads it would open it up to some extent, they would go in there just the same perhaps, but it would open up the whole forest and then they could utilize it all and not just particular localities. Then you would have the whole territory open so that people could use it anywhere. That would make one of the finest places in the world for camp sites if you could get in there. Of course it is utterly impossible now. There is that great territory all the way along the upper line of West Canada Creek and West Canada Lake, and no one ever goes in there except a guide or a fisherman. So far as the camp sites and roads are concerned, I believe it would be to the interest of the people to include them. I am in favor of those two propositions. But the other proposition, or the different proposition we have here, and particularly in regard to cutting and removing dead and down timber,— I think the proper thing for us to do is to adopt this provision of the Committee, because if we do not, we are sure to meet defeat on this proposition. The people have not, as a rule, studied this question as they should. It is a new question to many of them and when the time comes, if we put this provision in here for a few years, I believe then that with the

Department that we have proposed, nine commissioners, the people will soon learn to respect that commission and the Department, and they will take an interest in it because they have local men on it and they will then determine whether or not they want to utilize our forests as all other civilized nations do.

It is true that the waters of the Mohawk and of the different streams are lower — any man knows that. That does not come entirely on account of the Adirondacks but more largely from the fact that all along the Mohawk, away back into the Adirondacks, both north and south, the timber has already been cut off and, of course, there is nothing to retain the moisture. The Adirondacks have nearly as much water in most parts as they ever had, so far as I can see. I have observed these streams, particularly in the southern part of the Adirondacks, and I cannot see any substantial difference from what they were 33 or 32 years ago when I first went up there. I have fished those streams and they seem to be practically the same although almost all that territory has been lumbered. There are some sections that have not been lumbered but very largely it has been lumbered. Now there is a thick under-cover that protects it better than a great high tree and the cover is very much better distributed throughout the territory as a rule, and I believe that we would make no mistake in adopting Section 2 as the Committee suggests it, with the possible amendments of camp sites and roads.

Mr. Clinton — You have spoken of one section of the West Canada Lake country as being without proper means of access. The proposition here would be not whether a particular road should be built but whether permission should be given to cut roads everywhere. I do not understand that you are in favor of the latter proposition.

Mr. Dunlap — I think it would be perfectly safe to leave it to this Commission to decide where roads are necessary. I do not believe that if it was put in the Constitution they would ever build a road to Spruce Lake across the West Canada Creek country, because it would entail a very large expense and I doubt very much whether the State would ever embark on that proposition. There are locations where it would be desirable to build roads but I doubt very much the State's embarking upon the proposition of putting through a lot of roads. I do not think they will do it, but I do think we ought to have it in the Constitution and if we have any confidence in our Commission I think they will turn down all these propositions that look to exploiting the lumber business. That is what the objection is.

Mr. Cobb — In describing the lumbering operations on the Adirondack League lands, I would like to know if they removed all the timber or only the soft wood.

Mr. Dunlap — Only the soft wood, and only the large soft wood. They did not even remove that which was suitable for pulp wood. They certainly took what was big enough for good big logs, and cut that, and nothing else.

Mr. Cobb — That answers my question satisfactorily. While I am on my feet, if I may, I would like to take advantage of the occasion to say just a word in reply to the statement of Mr. Tierney. He described the scientific lumbering operations carried on in the Adirondack forest. Now I am quite familiar with lumbering operations there, and I do not think that his statement applies to operations in excess of ten per cent of those carried on there. The ordinary course of the lumberman is one of destruction. That has been so in every State in the Union. Usually the floating timber, the softer timber, spruce, pine and hemlock, is first removed, the spruce and balsam being cut down to about four inches. The next operation is the removal of the hard wood. Twenty-five years ago when hard wood lumber was worth 25 per cent of what it is now, they only took the very large tree, and I can readily conceive that a forest such as that described by Mr. Dunlap would grow up into a very nice forest in twenty-five years more but at the present time they remove for sawing purposes the hardwood timber down to at least six inches. Now the third operation of the lumberman is the chemical operation. The chemical plant moves in after the soft wood and the hard wood have been removed and it takes everything down to a twig the size of a person's finger. When the wood-choppers for the chemical industry are through, the land is absolutely denuded of any semblance of a forest or of even the little undergrowth that might develop into a forest. The Alleghenies in Pennsylvania twenty-five years ago were one of the most magnificent forests in the world. The whole of western Pennsylvania was covered with dark forests, of pine and hemlock. If you ride through there to-day, through any part of that section, you will see no timber. It is the most God-forsaken looking country that the eye ever rested upon. Now in this State the lumbering operations are more tardily carried on, apparently, than there and we have just reached the stage where the chemical plant will move in and take away all the remains of the timber outside the forest preserve and outside such protection as the State may afford. Now that is not only true in Pennsylvania and in New York State, but it is true in the South; it is true down through the Blue Ridge mountains. Wherever lumbering operations have been carried on, they have been carried on only with an eye to the profit that might be gained from those operations and without any reference to the future. That is true in this State to-day. Now I thoroughly believe that the natural course of the development of the forests in

this State will be along the lines of scientific forestry; that future years will see lumbering operations carried on directly by the State to the advantage of the forest, to the advantage of a large population that will grow up there, as they have grown up around the Black Forest and other forests in Europe, engaged in a thousand industries that utilize the wood taken from those forests. But I am sure that the time is not ripe for entering upon any extensive system of scientific forestry. The people are not ready for that operation. I rather favor this first timid step in that direction that is recommended by the Committee, the removal of dead timber. Twenty years' experience under these limitations will teach us whether we ought to take a further step and try not only to treat this great park as a pleasure-ground, but also to make it a source of revenue.

Mr. Schurman — Mr. Chairman, I understand we are considering Section 2 of the Committee's report. To that report, Senator Blauvelt has offered an amendment providing that nothing contained in this section shall forbid the State's constructing a highway from Long lake, by way of Blue Mountain lake and Racquette lake to Old Forge. Various as have been the opinions expressed on the floor this morning, all speakers, so far as I understand the debate, have agreed on the desirability of this amendment. I desire to second the amendment. I should have hesitated to do so but for the following circumstances: within the last three weeks I have been in that region going up from Lake George, by way of Warrensburgh and Chestertown. At that point the State highway runs north to Elizabethtown and the Keene valley and Lake Placid. There is one road that goes west, by way of Newcomb, to Long lake. Now before going I got maps from the Highway Department to study the system of State roads on both sides of the Adirondacks. I confess, and I presume every other member of this Convention that has made a similar study feels the same, that I was impressed by the fact that this gap, in the interest of the State, ought to be filled in. On the east side of the Adirondacks we have a great network of highways radiating from Albany, Schenectady, Troy and Saratoga; and on the other side we have a great network of roads radiating from Utica, Syracuse and Watertown. This line, this gap, is or should be the connecting link between these two systems of highways. I most cordially second the motion of Senator Blauvelt, and, judging from the sentiment expressed on the floor of the House this morning, I thought perhaps the Committee might now be ready for a vote on that question.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now arise, report progress and ask leave to sit again after recess.

The Chairman — All in favor of that motion will signify by saying Aye, contrary No. The motion is carried.

The Chair wishes to announce before rising that at least five speakers — Mr. Meigs, Mr. Landreth, Mr. Marshall, Mr. Clinton and Mr. Austin — have informed the Chair that they wish to speak on Section 2. The Chair suggests that if it is possible for those five speakers and anyone else who intends to speak this afternoon to divide up their time so that we can come to one of the first votes by half past three or a quarter to four, it would be a good thing because there are four other sections after this is completed and there are six pending amendments to this section.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. J. G. Saxe — Mr. President, on behalf of the Committee of the Whole, I beg to report progress and ask leave to sit again upon the pending proposed amendments.

The President — The question is upon granting leave. All in favor of granting leave will say Aye, contrary No. The Ayes have it, and the leave is granted.

The Chair will announce a meeting of the Committee on Rules immediately upon the 1 o'clock recess.

Mr. Wickersham — Mr. President, I move that we now recess until 2:30.

The President — It is moved that the Convention take a recess until 2:30. All in favor of that motion will say Aye, contrary No. The motion is agreed to and the Convention stands in recess until half past 2 o'clock this afternoon. Whereupon, at 12:55 p. m., the Convention took a recess until 2:30 p. m.

AFTER RECESS

2:30 P. M.

The President — The Convention will come to order.

Mr. Parsons — I ask unanimous consent to present out of order four reports of the Committee on Industrial Relations, and I ask that Mr. Leggett, who may desire to present a minority report, be granted that privilege later.

The President — Is there objection? If not, leave will be granted Mr. Leggett to file a minority report.

The Secretary will read the report.

The Secretary — Mr. Parsons, from the Committee on Industrial Interests and Relations, to which were referred the following proposed amendments providing for the inclusion of occupational diseases as a subject for workmen's compensation:

No. 23, introduced by Mr. Aiken.

No. 385, Int. No. 376, introduced by Mr. Foley.

No. 569, Int. No. 554, introduced by Mr. Eisner,
reports as follows:

The Committee on Industrial Interests and Relations hereby introduces Proposed Constitutional Amendment.

Second reading — To amend Sections 18 and 19 of Article I, of the Constitution, in regard to damages for injuries causing death, laws for the protection of the lives, health or safety of employees, and workmen's compensation for injuries or death from accidents or occupational diseases.

The President — Any motion to be made regarding the proposed amendment?

Referred to the Committee of the Whole.

The Secretary — Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred the proposed amendment introduced by Mr. Franchot, Print No. 766, Int. No. 131, entitled, Proposed Constitutional Amendment, to amend Article V of the Constitution by striking therefrom the provisions of Section 8 of said Article, prohibiting the creation of offices for the weighing, gauging, measuring, coloring, or inspecting of merchandise, products, manufactures or commodities whatever, reports as follows: The Committee on Industrial Interests and Relations recommends the passage of the proposed constitutional amendment with the following amendments: To the title in line one, after the word "amend" and before the word "article" insert "section eight", and after the comma, following the word "constitution" strike out the residue of the title and insert in place thereof the following: "In order to permit the noncompulsory inspection and grading of food products."

Page 1, line 2, strike out the word "created".

The President — Is there any motion to be made regarding the disposition of the proposed amendment? Referred to the Committee of the Whole.

The Secretary — Mr. Parsons, from the Committee on Industrial Interests and Relations, to which was referred Proposed Constitutional Amendment introduced by Mr. A. E. Smith, Print No. 194, Int. No. 193, entitled: Proposed Constitutional Amendment, to amend Article III of the Constitution in relation to minimum wages, reports in favor of the passage of the same with the following amendment: In the title strike out the word "minimum" and insert in lieu thereof the word "living", and after the word "wages" insert the words "to be paid to women and children". In line 5, strike out the words "minimum or". In line 6, strike out the word "or" and insert in lieu thereof the word "and".

The President — Any motion to be made regarding the disposition of this proposed amendment? Referred to the Committee of the Whole.

The Secretary — Mr. Parsons, from the Committee on Industrial Relations, to which was referred Proposed Constitutional

Amendment introduced by Mr. Parsons, Print No. 417, Int. No. 405, entitled, Proposed Constitutional Amendment, to amend Section 19 of Article I of the Constitution, in relation to legislation affecting employees, reports as follows:

The Committee on Industrial Interests and Relations recommends the passage of the same without amendment.

The President — Is there any motion to be made as to this Proposed Amendment?

Referred to the Committee of the Whole.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules makes the following report.

The Secretary — Mr. J. L. O'Brian, for the Committee on Rules, recommends the adoption of the following special rule:

Resolved, that the debate on section 2 of the pending amendment on conservation close at 4:30 p. m.

Second, that the debate on the entire amendment close at 6:00 p. m.

Third, that all speeches on said amendment be limited not to exceed twenty minutes.

Mr. J. L. O'Brian — I move to adopt the resolution contained in this report.

The President — Are there any remarks? All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

The Convention will go into Committee of the Whole for consideration of the article on conservation. Mr. J. G. Saxe will resume the Chair.

(Mr. J. G. Saxe takes the Chair.)

The Chairman — The Convention will come to order.

Mr. Blauvelt — It was suggested just before taking recess that my proposed amendment to permit construction of a road in the Adirondacks be acted upon at this time. It being the first of the proposed amendments to this section, I would move it now.

The Chairman — Is there any objection to taking up Mr. Blauvelt's amendment at this time?

Mr. Leary — Before going to a vote on this amendment I would like to have the introducer or somebody inform me or enlighten me why it is necessary at this time to put a provision in the Constitution providing for a road for a special and a particular locality. Now, if we are going to restrict all other parts of the Adirondacks and permit a road to be built in one locality alone, I would like to know the reason for it. I consider that there is no place in the Constitution for a special act providing that the Legislature shall not pass a law of this kind.

Mr. Blauvelt — I can briefly state the reason, Mr. Chairman. There are a number of existing roads in the Adirondacks. An existing highway to-day may be improved as a State highway or as a

county road or as a town road. No new highways, however, can be built upon State lands where there is not an existing road. At the present time there is no road going east and west through the Adirondacks between — I think I am safe in saying — the road from Elizabethtown down through Lake Placid and Saranac, on the north, and the extreme southerly edge of the Adirondacks. The construction of a new road of about twenty-five miles in length, built between Blue Mountain lake on the one side and Old Forge on the other, will give a highway about midway north and south of the Adirondacks. There is no existing road there at this time, and to meet the present constitutional objection, it is necessary that this particular road be specified in the Constitution. I move the amendment.

The Chairman — Gentlemen, are you ready for the question?

Mr. Angell — I offer as a substitute for the proposition of Mr. Blauvelt my proposed amendment which provides that the Conservation Commission may devote such lands in the forest preserve as it deems proper for the purpose of highways. It seems to me not the proper thing is to say by constitutional amendment that we shall have a certain defined road — that sounds more like a resolution before a board of supervisors in Hamilton county than it does like a provision in the Constitution of the State of New York. If we are to have the Commission of Conservation which we have provided for, it certainly seems to me that we may properly entrust that Commission with saying that when it becomes necessary to construct a highway through the Adirondacks, the Commission may devote such lands belonging to the State to that purpose as may be essential. That is the provision which would be proper and a reasonable and a just provision for this Constitutional Convention to adopt; not to say and not to pin down the Conservation Commission to one little highway leading from Old Forge to New Forge, or from New Forge to Old Forge, or something of that kind, but to give a broad discretionary power to this Conservation Commission in whom you have voted to entrust these matters, that they may devote such lands in the forest preserve as in their discretion is necessary to highway purposes.

The Chairman — The Chair will rule that, in view of the fact that there is just one hour and three-quarters for debate, we had better not go into any general question of voting on different amendments, substitutes or otherwise, at this time. The debate will continue from now to four-thirty on the general and special rules, at which time all amendments will be taken up.

Mr. Landreth — Mr. Chairman, this Convention in Committee of the Whole, on August 6th, adopted, in somewhat amended form, Section 1 of the proposed article on conservation, submitted by the Committee on Conservation in Bill No. 785, and finally amended in the form now printed as No. 787.

In doing so the Convention adopted an admirable system for the official control and administration of this newly created Department of Conservation.

Section 2 of this bill provides for the preservation and operation of the public forests by the Department of Conservation.

The form of this section submitted and supported by the majority of the Committee on Conservation, so far from being constructively progressive and in keeping with the advance in public intelligence and appreciation of modern forestry, and in keeping with the comprehensive and effective administrative system provided by Section 1, is disappointingly narrow and restrictive and fails to secure to the people of the State any greater opportunity for access, enjoyment and beneficial use of the public forests than they now possess. In its ownership of the public forests the State has acquired and is now holding an asset of immense value and of wide possibilities for the benefit and delight of *all* its people. The State as the agent of the people is holding this asset *in trust* for the benefit of the real owners, the people. The fundamental duties and obligations imposed on every trustee are:

(1) That the asset shall be safely guarded and protected against loss, danger and impairment.

(2) That the asset shall be properly used and employed in full compliance with the expressed or implied purpose of the trusteeship.

(3) That the asset shall be returned to the original owners or beneficiaries at the termination of the period of the trust. In the present trusteeship the term is perpetual and we are, therefore, only concerned with the first two duties, namely: the proper protection and the proper use of the forests. Each of these duties is mandatory, not simply permissive. Neither can be omitted or neglected. It would be a breach of the trust to use the asset in such manner as to appreciably endanger its safety. It would equally be a breach of trust to fold it carefully away in a napkin under fear of the money changers. Every use of an asset, even every proper use, generally involves *some* risk. The fact that such risk attends the use does not necessarily warrant the non-use. Absolute safety would in some instances prohibit all use, and conservation is certainly not prohibition of use. The obligations of the trust are fully met, whether tested by legal, equitable or moral standards, if, in the proper use, the trustee exercises extreme care for the safety of the trust. If the value of the risk is greater than the value of the use, the asset clearly should *not* be used. If the value of the risk is materially less than the value of the use, the asset *should* be used. If the risk increases with the use, then, that measure of use should be adopted which will leave its economic

value clearly in excess of the value of the risk. Presented concretely, what are the uses under consideration and what are the risks attending those uses? The natural, or as we may call them the automatic, uses or benefits arising from forests are:

(1) Some slight effect on the rainfall, the existence and amount of which being dependent on the topographical and climatic conditions of the locality.

(2) A very considerable effect in increasing the regularity of stream-flow, particularly, in diminishing the period of extreme low-flow.

(3) A very decided effect in preventing soil erosion, particularly in steep slopes.

(4) As a consequence of this prevention of soil erosion, a very decidedly beneficial effect follows in preventing the silting and raising of stream-beds and the resulting raising of floor-levels.

These results, being natural, are independent of human activities so long as the forest is allowed to remain; and, therefore, will be the same whether the majority or the minority amendment be adopted. Not so, however, with the artificial uses of the forests; the majority amendment permits *no* roads, no leasing of camp-sites, no access, no utilization of mature timber, no economic benefit arising from scientific forestry. In other words, no artificial benefits to any except to a privileged class who are fortunate enough to possess their own private camp-sites and who can reach them by their own private means of conveyance. Naturally, the members of this class are not particularly solicitous that the natural beauty of the wild forest be marred by the presence of the less fortunate citizens of the State who are dependent on roads for their access and on the privilege of leasing camp sites for their habitation. On the other hand, the minority amendment, as presented by Mr. Angell, is based on the following conceptions:

(1) That the public forests belong to *all* the people of the State and should be so administered as to be reasonably accessible to all the people to properly use and enjoy.

(2) That this use and enjoyment necessitates the construction of highways as a means of access into and through the forests, and that the Conservation Department should be vested with authority for their construction.

(3) That it also necessitates the leasing of camp sites of limited areas, for limited periods of time, on restricted portions of the second area as classified by Mr. Angell, and that the Conservation Department should be vested with the authority to make such leases.

(4) That, back from the lake fronts, the major streams and mountain tops, which should be preserved in their natural state

for their scenic beauty, there are hundreds of square miles of monotonous forest area which should gradually be brought under skilled forest cultivation, and thus yield a large revenue to the State in helping to replenish the rapidly diminishing timber supply.

(5) That the extensive and striking object lesson in scientific forestry under State administration, which the highways through the forests would make accessible, would furnish a strong incentive toward the forestation, by private effort, of some portions, at least, of the 7,000,000 acres of waste land now in the State, and would thus bring about a beneficial influence on our irregular stream-flow and declining ground-water level throughout the State, and also to still further increase our timber supply on private lands.

Having enumerated the uses to which our public forests are readily available, let us scrutinize the alleged risks which are urged as arguments against such use. It is said that the presence of roads and camps would mar the scenic beauty of the natural forest. Grant for the moment that this is true. Is it not better that a *large number* of our people should be able to visit and enjoy a forest of even a slightly marred scenic beauty, than that only a *privileged few* should be able to enjoy an unmarred forest? But it is not true that the scenic beauty of the forest would be marred by the adoption of the Angell amendment. This amendment provides that the Department of Conservation may exercise its discretion as to the leasing of camp sites of *limited* areas for *limited* periods of time, on *restricted* portions of the *utilization* forest, viz.: the *second* area of Mr. Angell's classification. As these areas are remote from the water fronts and mountain tops, it is difficult for any sincere and healthy imagination to discover any real prospective danger of impairment. It is also claimed that by the negligence or dishonesty of State officials, timber might be stolen and that the existence of roads in the forests would increase this danger. This possibility is quite true but it is also true that the carrying on of any State activity such as its canals, its highways, its educational, charitable and penal establishments, in fact the operation of its fundamental branches of government, legislative, executive and judicial, all offer opportunities for negligence and dishonesty in administration, and that the existence of our railways, telegraph and telephone systems, make it easier for the criminal; whether in or out of office; to get away with the goods. And yet, in spite of these dangers, we hear no suggestion of doing away with these governmental activities, nor of revoking the charters of the common carriers. The policy of locking up our forests against access and proper use by its rightful owners, the people, is based on an unwarranted and demoralizing assumption that public officials cannot be trusted. It is inconsistent to provide an elaborate department

of State government such as has been provided by section one of this article and then to tie the hands of its administrative officials with respect to one of its most important fields of possible usefulness, the forest. On Friday, Judge Morgan J. O'Brien paid a glowing tribute to the efficacy of the Commission form of government as extended to the Palisades Interstate Park Commission. At the same time I noticed that Judge O'Brien was opposed to the leasing of camp sites. It came to my notice yesterday and was verified this morning, that the Palisades Interstate Park Commission, of which Judge O'Brien is a member, does give permits for camp sites for restricted periods of time, in other words, following just the policy that we are arguing for in regard to the State forests. Professor George F. Swain, who is at the head of the graduate school of Civil Engineering of Harvard University and who is a recent ex-president of the American Society of Civil Engineers and the author of a recent remarkable book on water conservation, says: "It should be recognized that conservation means wise use and not restriction." An authority of far greater wisdom some centuries ago when speaking of conservation said, "by way of parable?" "For the Kingdom of Heaven is as a man travelling into a far country who called his own servants and delivered unto them his goods. And unto one he gave five talents, to another two and to another one; to each man according to his several ability; and straightway took his journey. Then he that had received five talents went and traded with the same and made them other five talents and likewise he that had received two, he also gained other two. But he that received one went and digged in the earth and hid his Lord's money. After a long time the Lord of these servants cometh and reckoneth with them. And so he that had received five talents came and brought other five talents saying, 'Lord, thou delivered unto me five talents, behold I have gained beside them five talents more.' The Lord said unto him, 'Well done, thou good and faithful servant; thou hast been faithful over few things, I will make thee ruler over many things; enter thou into the joy of thy Lord.' He also that had received two talents came and said, 'Lord, thou delivered unto me two talents, behold I have gained other two talents beside them.' The Lord said unto him, 'Well done, good and faithful servant; thou hast been faithful over a few things, I will make thee ruler over many things. Enter thou into the joy of the Lord.' Then he which had received the one talent came and said, 'Lord, I knew thee that thou art a hard man, reaping where thou hast not sown, and gathering where thou hast not sowed. And I was afraid and went and hid thy talent in the earth; lo there thou hast that is thine.' The Lord answered and said to him, 'Thou wicked and slothful servant, thou knewest that

I reap where I sow not, and gather where I have not strewed. Thou oughtest therefore to have put my money to the exchangers, and then at my coming I should have received mine own with usury. Take therefore the talent from him and give it to him which hath ten talents. And cast ye the unprofitable servant into outer darkness, there shall be weeping and gnashing of teeth.' " May the day never come when with respect to the custody of its conservation trust, or any trust, the accusation may rightfully be brought against our beloved State "Thou wicked and slothful servant. Thou has been derelict in the discharge of a sacred trust."

Mr. Chairman, I trust that the amendment of Mr. Angell will prevail.

The Chairman — The Chair will state at this time that under the rules which have been adopted, at four-thirty we will proceed to vote on the amendment without further debate, so that if there are any further amendments besides those already handed up to the desk, they should be handed up at this time, because no more amendments will be received after this time.

Mr. Whipple — I offer the following proposed amendment:

The Secretary — By Mr. Whipple. Proposed amendment: Add at the end of Section 2, the words, "except for domestic use as fire-wood by residents within said park."

The Chairman — Are there any further amendments? The Chair recognizes Mr. Meigs of Franklin county.

Mr. Meigs — Mr. Chairman, I rise to second the motion of Mr. Angell, and I think for the benefit of those who did not hear Mr. Angell's remarks, that we should refer to those amendments. They appear on page 6 of document number 28, and briefly on the calendar of to-day.

Mr. Chairman, if this proposition is to be determined by the delegates to this Convention by excellence of oratory or grace of presentation, by force of argument or by weight of reputation of those who are in opposition, I would already lose heart and consider my efforts useless. But I believe that your votes will be cast upon the weight of evidence, upon the lessons taught by the history of the nations of Europe and upon the demands of our people, rather than upon the subtle arguments of the able opponents of this measure. While many of them have had only limited experience in these woods, I have been struggling with the primal forces of nature, deep in the woods themselves, studying this question at first hand. And that study was approached not from the point of view of an operator alone, but from the point of view of a real lover of the woods — as a sportsman and lover of its wild life. And though I have cut down, I have planted. Though I have utilized the forests, I have enjoyed the rare opportunities afforded by them for joyous recreation and reinvigoration of soul and mind and

body. By adopting section one of the proposed article, this Convention has taken a step which puts the State in the forefront of the great conservation movement. The policy thus indicated is wise, constructive and scientific. It has the broad outlook and far vision which are essential for the great object in view—the conservation of our natural resources. And it has been a great delight, and I admit it an honor to have been in such harmonious association with the Committee. The means to accomplish great things is within our grasp. This work creates a splendid department, one which will command the respect and confidence of our people. It is, therefore, with great regret that I am forced to part company with the majority of our committee in considering this section—Number two. I recognize their superior wisdom as to details of the formation of such a department but on the practical questions of administration covered by this Section two, I am forced to differ from them. Section one refers to the broad question of conservation. Section two refers to the Adirondack and Catskill Parks and the proper administration of these properties. I would be glad if Mr. Angell would consent to allow this Convention to consider each section of his amendment separately; as each touches a separate feature of the policy of administration, and is not necessarily dependent upon the others. Let me then touch a moment upon the first proposition—that of a fair division of this land into two classes—and let me say just here that no member of this Committee will fight harder against a proposition to commercialize our forests and waters *than I*. The time has not arrived for that, and if we are wise in our decision to-day, it may never come. I do not believe in opening the door to the lumbermen; to letting down the bars to any interest which would injure our forests; but I do believe that we should give discretionary power to this Department of Conservation, which we have created, to trim and prune for the *benefit* of the forests. Now, as to this classification of lands. There are many precedents in the history of our State for such a division as is here contemplated. Our honored chairman in his delightful report—that flowed with the grace and charm of a mountain brook, rather than with the rush and roar of his own Niagara—gave several instances of such a division. First the Salt Springs Reservation Act. This provided for a classification of property and the proper conservation of all, and the utilization, for various purposes, of parts. The act relative to the use of navigable waters recognizes the proper use of these waters for various benefits. And another example of which we are all familiar, that of Niagara Falls, is almost a parallel. The people of this State and nation were divided into two camps. The one could see only power, and the value of this power to build

up industries, to save the ever increasing drafts upon our coal resources, to give heat and light to the surrounding communities. The other could see only the grandeur, the beauty, the soul-inspiring, uplifting majesty of this great work of nature. And for a time it seemed as if no working basis for a compromise could be established. But it was found, and though there may be irreconcilables in each camp still — the vast majority of the people are content. And what was this basis? Simply a division, a classification, a use of part for power, a use of the balance for beauty. Mr. Dow is quoted from the Salt Spring Reservation Act. Let me read you one clause. This statute provided: "It shall be the duty of the superintendent to give directions from time to time respecting the cutting of timber and wood on said reservation, and to determine the parts or places on said reservation where the timber and wood may be cut for the use of salt manufacturers, and the size of the wood or timber to be so cut; and also to direct in what places the wood and timber shall be preserved for growth, and where it shall not be cut, and if any lessee manufacturer or other person shall fell any timber or wood, or shall take and carry away any timber or wood, saplings or poles, from any place or places where the superintendent shall have directed the timber and wood to be preserved for growth, each and every person so offending shall forfeit and pay the sum of \$5 for each offense, and treble the value of such timber, wood, saplings and poles so cut and carried away."

Another example with which we are all familiar is the use which the United States Government is making of its forest lands. The government has divided its finest lands into two classes — those for parks like the Yellowstone Park, and those for forest preserves, in which cutting of timber is permitted. In the establishment of this system they are acting for the benefit of the people and also for the benefit of the forests. Recently under the Weeks Law, the Federal government has established the Appalachian and White Mountain Reserve. These properties were purchased to protect the forests. Yet it is expected that merchantable trees will be sold and removed. They are to be preserves, not parks. Can we not trust our lands to our officials to do the same? For years the Federal government has sold timber, and done so without scandal. Why can't we follow this precedent? And that is what Mr. Angell proposes to do with our forest resources. A part shall always remain wild forest land, shall not be sold, and the timber shall not be cut, removed or destroyed; the balance shall be used not for commercial purposes but for utilization forests, in which trees *may* be cut for the purpose of benefiting the forest,— for increasing the yield per acre of forest products. Does not this meet the demands of the rule,—“The greatest good to the greatest number”? But note

carefully the important difference between this plan to classify the forest resources, and the plan adopted at Niagara. There a part of the Falls was used for commercial purposes, here no part may be used for commercial purposes. Let me again repeat. In the second class of lands, only *such* cutting shall be allowed as will increase the growth of trees — will increase the yield per acre. There is no commercialization in this. And no cutting shall be permitted in the first class of lands. This material difference between the underlying principles in operation at Niagara and proposed here made for an added safety to the coming generations. And what will be the effect on the woods of this utilization? First, it will not affect their beauty. In lumbering for profit, which is not to be the policy here, on an area of some 65,000 acres, it was estimated that only 2 per cent. of the number of trees were cut, only two out of 100. From a short distance there was not noticeable effect. Cutting by selecting the ripe trees under scientific forestry principles, probably fewer trees would be cut. Such cutting as has been done in the past has not resulted in denuding the forest, for there are acres now fully covered with forest that have been lumbered for profit three separate times already. If even this lumbering for profit has this result, how much less will the beauty of the woods be damaged when the cutting is to be done *only* for the benefit of the woods?

As to water, anything which improves the forest and increases the growth per acre increases the natural reservoirs of the woods — increases the water, prevents run-off. And as to game, anything which increases tree life increases food for game — and makes possible an increase of game. If we once get away from the idea that this cutting is to be done for revenue and profit, we will be forced to admit that such cutting as is here proposed is safe. And these are not the only safeguards thrown about this plan. Even under this plan all the lands in the forest preserve may be placed under the prohibiting clause. For this proposal provides in the first group: “Lands upon the mountain tops and the lands in and contiguous to the lakes and major streams, and such other lands as *for any reason* the department shall determine should be so classified.” And this classification shall be made after such public advertisement and hearing as the department may prescribe. Now, Mr. Chairman, we have provided for a department of conservation in which we have great confidence. Can we not intrust them with so much discretionary power? If the rich camper, owning his few acres, surrounded by State land, can convince this department that that particular parcel of land should be placed in the first class it will be done, and he will be undisturbed in his enjoyment of that part of the estate of the people.

Why should he fear? Even after the first classification if he can show good reason why the commission should transfer the land surrounding his camp into the first class from the second class it will be done. Should not that satisfy them? The mountain tops which are visible to so many will always remain wild and the shores of lakes and the streams and rivers, along which the larger number of travelers will go, and which include all the lands ever used by these lovers of the woods will still remain a monument to beauty — a sample of virgin loveliness to please that aesthetic sense which is dying out far too fast in this generation. But what of the balance of those lands — those of the second classification? Again let me say, I am unalterably opposed to the commercialization of any part of the timber of the State. No cutting should be done which has for its purpose the making of money, the security of revenue, the satisfying of the craving of any industry. That shall not be permitted and that is not made possible under this proposal. But what we propose is to give discretionary power to the department of conservation to sell and remove ripe trees, trees which have reached maturity, which have ceased to grow, which are alive but will soon die, and decay and waste. To give the department power to prevent this needless, irrational waste which has been going on. To utilize that which by its removal will benefit the forest, not injure it. That which by its removal will increase the yield per acre of our forests. That which is detrimental to forest growth so that we can make two trees grow and flourish where one ekes out a miserable stunted existence to-day. But this work must only be done under rules prescribed in accordance with the principles of scientific forestry, and never shall the lands be so cut that they shall lose their forest cover or become other than forest lands. Now let us see if *even this* is wise.

Mr. Chairman, the State of New York must here and now begin to husband its forest products, for the grim visage of famine is even now glaring at us. The end of our forest resources is in sight; the last reservoir of timber has been tapped; the last tree of the vast timber resources of this country and Canada from Hudson bay to the Gulf of Mexico and from Vancouver and Texas to Maine and Florida has been counted. Are we to hesitate, and by prohibiting the improvement of our forest lands for another quarter century leave our children's children in want? We are too prone to think only of the present — to give no heed to the coming years of famine. While there is plenty we bask in the sunshine of contentment and take no thought of the morrow. We are living in a wasteful age — an improvident age. Let us beware. We say with a shrug of our shoulders, "what has posterity done for me?" But the next generation will call us to account. We cannot be

unfaithful stewards without receiving the just condemnation. Are we willing to tie up this talent in a napkin, bury it out of sight and then expect other than the just reward for such unfaithfulness? In an able address before the Fifth Conservation Congress held in Washington, to which I had the honor to be one of the delegates representing this State, Mr. E. A. Sterling, a forest and timber engineer of great ability and experience, said: "Let us assume the impossible probability that fifty years hence our wood consumption will be as low as that of Germany to-day, or 18.8 cu. ft., or 225 board feet of saw timber per capita. Assume, also, that during the same period our population has increased to 175,000,000. On this basis with a per capita consumption of 18.8 cu. ft. of solid wood, our gross consumption in board feet would be about 39,000,000,000 ft. or practically what it is to-day. "The national forests are estimated to have a potential output for all time of 6 billion feet per year, while the State forests might eventually produce a billion feet annually, or a total, from public forests of 7 billion feet. This leaves 32 billion feet to come from private forests if our needs, on the economical present German basis, are to be supplied. German private forests yield per acre about 200 board feet of saw timber per year, so our private forests would have to comprise 160 million acres under intensive management to produce the needed 32 billion feet. Our present area of private or unreserved forests is about 440 million acres, so on at least 36 per cent of this area private forestry needs to be practical if we are to have enough wood. In the above, cord wood, which constitutes about half of the gross wood consumption in most countries, is ignored, since it is low-grade material which will probably be available on farm woodlots and from tops and wastes for all time." Mr. Sterling was arguing for the necessity of increasing the interest in the raising of timber by private owners of lands. But how far stronger are his arguments when applied to State owned forest? Able to employ convict labor and many from among the feeble-minded of the State, who would vastly benefit by this kind of work; able to borrow money at a low rate of interest, with a corporate life longer than the corporate life of any private organization. How much more forcible are the arguments for the proper development of the forests when applied to the State than to private corporation. In an able article Prof. N. C. Brown, of the State College of Forestry, says: "Wood next to food is the most indispensable commodity in our civilization. It has been and will continue to be relied upon to serve mankind in an unlimited variety of ways. Its uses are not only many but varied. It serves as fuel to afford warmth and for the preparation of food; it supplies material for the buildings which give us shelter and afford homes; it is used as a container in which our food is shipped; it is a factor in the great transportation problem on account of the use of wood for cars, ties,

boats, docks and similar purposes; it is a big factor in the mercantile business because of its wide use from vast storehouses to small packing boxes; it is of vast importance in agriculture not only because it supplies necessary posts and poles for fences, or other conveniences, but also on account of the immeasurable indirect benefit which the forests serve in protecting the areas and adding to the soil moisture; it is an important element in the manufacturing world if we consider the thousands of industries using wood as a raw product and the thousands of persons engaged in these manufactures.

“The reason that wood is such an important factor in our economic life is due to the following reasons: (1) It has been abundantly available. (2) Its cheapness. (3) Its great workability. More than one-half of our population, according to Fernow, live in wooden houses, while two-thirds of our people use wood for fuel. The forests not only supply lumber, but also bark for tanning purposes; materials used in medicine, fibres for mattings, naval stores, including turpentine, resin, pitch, etc., chemicals, including wood alcohol, acetate of lime, wood creosote and charcoal; pulp from which vast quantities of paper are made; also fruits, seeds, berries and numerous other incidental products. From the forest as a whole accrue vast indirect benefits such as health and recreation grounds, a home for game, a protection to water sheds, a regulator of water supply, and a beautifier of the country. Our forest resources have for a long time been commonly considered practically inexhaustible. We are now, in the more developed regions, beginning to appreciate conditions. In such sections we are entering into an economic revolution with respect to our wood supplies. The less developed sections will soon awaken and gradually, as necessity dictates, the movement will broaden. The time has come when we of New York must fully realize the situation. If we promptly adopt proper methods we may still do much to secure a fair assurance of a future supply. The older settled European countries, notably Germany, France, Austria and Switzerland, passed through this period several centuries ago, and now a proper forest policy has become thoroughly established. We are, as a nation, consumers of vast quantities of wood. Statistics show that our consumption per capita is 250 cubic feet of wood per annum. We are wasteful as is shown by comparison with other countries. The Germans use 37 cubic feet and the French but 25 cubic feet. It is apparent that our consumption is too large, but only scarcity of material or higher market prices will produce a decrease. Statistics further show that our consumption instead of decreasing is, peculiar as it may seem, increasing. The report of the Census Bureau shows that we use to-day approximately twice as much per capita as we did

fifty years ago. We have long been using inferior woods, when market conditions permitted, and kinds of lumber that but a few years ago were considered of no commercial value are now being marketed and used. White pine, for example, was for a long time our principal timber trees; at the present time, however, is fourth on the list of trees furnishing supplies. The total cut in 1912, amounting to three billion feet, was about 40 per cent of that cut in 1900. The wood has such fine properties that it was generally useful; but several species formerly refused by the trade are now taking its place for particular purposes. The Southern pine gradually supplanted it for certain purposes; but, peculiar as it may seem, the yellow pine is now giving away to Douglas fir. In this instance there is a failure of the substitution to meet the demands of the market and even a second tree has become a factor. We can but recall the days of 'White Pine and plenty of it' and consider its wide use—then observe the changes to-day. The inaccessible spruce, the greatly inferior hemlock, the despised balsam, have all been used as substitutes. They too are going the way of the white pine."

New York State uses to-day 10,962,000,000 feet of lumber annually; of this she produces (1913) 457,718,000 feet, although if properly managed and brought to point of highest efficiency her 12,000,000 acres of land best suited for forests should grow annually 2,400,000,000 feet, or over five times as much as at present produced. The European nations were much more wise. After the French Revolution and the War of 1870, France awoke suddenly to the necessity of growing a timber supply. She has spent \$70,000,000 in this effort. Germany has for generations grown timber for national use, and many States of the German Empire meet a large part of the expenses of government from the net returns from their forests. Let the State of New York take the necessary steps now before it is too late. Let us permit the improvement of our State forests, or at least a part of these forest lands. It is now time to determine the policy this State shall follow during the next generation, for it takes one hundred years to grow a crop of mature forest trees. We have heard much of the constitutional provisions of 1894. Let us look for a moment at the history leading up to the adoption of this section: The Constitutional Convention of 1894 began its sessions early in May. No committee having in charge either the forest lands of the State or of the forest preserve or of the natural resources of the State was created among the first committees. On July 31st, or nearly three months after the convening of that body, at the request of the New York Board of Trade and Transportation, Mr. David McClure presented to the Convention the following resolution:

"Whereas, The preservation of the forests and watersheds of this State is of the greatest importance to all our people and to every interest within the borders of the State.

"R. 156. Whereas, The preservation of all forests and watersheds of this State is of the greatest importance to all our people and to every interest within the border of the State; therefore, be it

"Resolved, That the president of the Convention appoint a special committee of five members to consider and report what, if any, amendments to the Constitution should be adopted for the preservation of the State forests."

On August 2d, Mr. Choate, Chairman of the Convention, appointed a small committee of five. On August 21st, Mr. McClure reported to the Convention that his committee had had but one meeting and but one public hearing, but on the second day following, August 23d, this committee made the following report:

"To the Constitutional Convention: The Special Committee on State Forest Preservation, which was directed to consider and report what, if any, amendments to the Constitution should be adopted for the preservation of the State forests, respectfully reports: That your Committee has had presented to it many valuable arguments and statements bearing upon the matter, and, after careful consideration, has unanimously reached the conclusion that it is necessary for the health, safety and general advantage of the people of the State that the forest lands now owned and hereafter acquired by the State, and the timber on such lands, should be preserved intact as forest preserves, and not, under any circumstances, be sold. Your Committee is further of the opinion that, for the perfect protection and preservation of the State lands, other lands contiguous thereto should, as soon as possible, be purchased or otherwise acquired, but feel that any action to that end is more properly within the province of the Legislature than of this Convention. Your Committee recommends the adoption by the Convention of the following amendment to the Constitution, namely:

"O. O. No. 393 P. No. 452.—'The lands of the State now owned or hereafter acquired, constituting the forest preserves, shall be forever kept as wild forest lands. They shall not, nor shall the timber thereon, be sold.'"

The Legislature of 1892 had enacted a law (Chapter 707) which provided that under certain conditions the commissioners might sell portions of the forest reserve, and again in 1893 by Section 103 of Chapter 332 of the laws of that year entitled "Sale of timber on forest preserve." permission was given the commissioners to sell certain kinds of timber "not less than twelve inches in diameter."

This concluding proposed amendment is aimed directly at these two statutes, and evidently proposed to prevent for all time what those legislative acts permitted, but it did not intend to prevent rational use, and did not in terms prevent the removal of small trees standing in the way of large improvements. It is well to know that the resolution of the Board of Trade and Transportation asks that the forests and water-sheds of the State shall be preserved for the benefit of *all* of the people, and for the benefit of *every* interest within the borders of the State. In asking for the adoption of the proposed amendment Mr. McClure remarks: "The lands are fit for none other than public and general uses."

Mr. Austin—I have no desire to limit the remarks of Mr. Meigs. I am perfectly willing to let him go on until he is finished, but I desire to call attention to the fact that his time has expired, and if the rest of us are to be limited to twenty minutes, I think he should give away. I simply wish to say I have no objection to his continuing, if the rest are not to be bound by the twenty-minute rule.

The Chairman—The delegate's time has expired.

Mr. Whipple—Mr. Chairman, I move that the delegate's time be extended five minutes.

The Chairman—And the Chair wishes to say that if the Convention extends Mr. Meigs' time by five minutes, by unanimous consent, it will leave one hour for the remaining speakers, and the Chair is advised of four other speakers who want to speak. The matter is in the hands of the Convention because the Chair must sustain the point of order in the absence of unanimous consent.

Mr. Parsons—Mr. Chairman, I ask unanimous consent that Mr. Meigs' time be extended ten minutes.

The Chairman—Is there objection. So ordered. Mr. Meigs' time is extended to 3:30.

Mr. Meigs—I will make this as brief as possible. "The lands are fit for none other than public and general uses. First, as a great resort for the people of this State. It is priceless as a place for seeking, finding and preserving health. Second, for the wants, the actual physical wants of the people in general, we need the waters of those mountain streams and lakes and of the rivers that are fed by them. We will one day need the water stored in the Adirondacks to drink in the city of New York." Therefore, the purposes which he proposed to accomplish by this Proposed Amendment were, that the lands should be retained as a reserve for the people and to conserve the waters of the forests. It was also suggested that all the lands within the Blue Lines should be acquired for the State, but nothing was inserted in the Constitutional provision to accomplish this purpose. The report of Mr.

McClure was adopted and his proposed provision became a part of the basic law of the State, although it is interesting to note that scant time was given in the Convention for its consideration. In the Committee of the Whole very few spoke for or against the provision, and only two principal amendments were suggested. Only two hours were consumed in the discussion and on September 13 on final passage, only 122 votes were polled on *this* proposition, although on the provision immediately preceding 156 had registered their votes. It is, therefore, fair to say that up to the passage of this amendment no general interest had been aroused in the State on this subject. It seemed to be an idea of some small group of men which was favorably acted upon by a comparatively small number of the Convention. By reading the report of the remarks to the Convention on the subject it is evident that three purposes were to be accomplished: First, the lands were to be used as health reserves and recreation grounds by the people; second, the water was to be conserved for the benefit of the navigable streams and as a possible supply of potable water for New York city; third, the timber on the forests was to be preserved. But immediately various questions arose as to the proper interpretation of that section and it almost immediately became a subject for discussion and a subject for the consideration of the Attorney-General. In February, 1895, Attorney-General Hancock decided that there was no authority under the law for the removal of old logs which had been cut prior to the enactment of this provision and therefore they were left to rot on the lands.

In 1903, Attorney-General Cunnien decided that the expression "wild forest lands" in the Constitution indicated that it was intended to preserve those lands as a wilderness in which "the work of man should not appear." Therefore, it is seen that at once, the purposes of this section were nullified; for if the lands were forever to be kept as wild forest lands, preserved from the touch of man, then they not could be used for any purpose by man. No camps could be erected, nor could firewood be gathered, nor could any change be made in their wild condition. For the purpose of the use of these lands as recreation grounds it is necessary to open roads, so that the people may enter, but in many decisions, beginning with that of Attorney-General Jackson, July 25, 1907, roads were prohibited. General Jackson says: "A county being a public corporation, cannot take or acquire lands of State in forest preserve, either for new roads, improvement of existing roads, by widening or deviating from existing lines. No tree can be destroyed nor carried away except by violation of the law, or through an amendment of the Constitution." What a far cry this is from the purposes expressed by the Committee proposing the

language of section 7 of article VII of the present Constitution. This was followed by a similar decision May 17, 1908; by Attorney-General O'Malley in 1909, Attorney-General Carmody in 1912. In all of these decisions it was stated that there was no authority under the Constitution for the laying out of any highways or for the deviation of the routes of the existing highways. Other suggestions were made relative to the use of certain State lands for the development of mines, although it was clearly shown that no timber would be destroyed, the Attorney-General decided that mines could not be opened, because if they should be, the wild condition of the forest lands would be interfered with. The result of these decisions has made the use of this property impossible *except by those who are willing to violate the provisions of the law*. This certainly was not the intention of the framers of these constitutional provisions. Another result which followed immediately upon the acceptance of this provision in the Constitution was the large increase in the number of rich men's camps and parks. These men seemed to realize that if the State lands were to be shut to the average citizen of the State, that they owning large or small tracts or even camp sites could control large bodies of State land in their immediate vicinity. The Adirondaeks have become recreation and pleasure grounds for the rich. I believe that it should be placed within the reach of all. Let us look for a moment at the changes which have occurred since these provisions were inserted in the Constitution in 1894. Within that time there have been started, created in colleges at least twelve departments in which forestry has been taught as a science, and in which degrees are given. In addition there are some thirty colleges giving courses of more or less length. In 1894 there were only two or three men in this country who had made a study of forestry and who could lay any claim to being scientific foresters, but to-day there are hundreds of young men graduated annually from these institutions of learning who are capable, efficient, intelligent, and with the highest character, who are fitted in every way to supervise work of this kind for the State; and I congratulate this State and nation upon securing such an able corps of young men.

Also the great conservation movement has had its birth since 1894. That movement which has created for this country a large number of forest parks and forest preserves in the western States and has provided forests which will annually yield billions of feet of timber, becoming a lasting benefit to this country. Conservation has exercised its restraining influence on the use or abuse of many of the natural resources. Water powers, irrigation, reclamation, have all had their share of the interest of this movement. It is also interesting to note the development among the

various associations which have taken a deep interest in our Adirondack property; notable among these is the Association for the Protection of the Adirondacks. This association has been in existence for many years, but its attitude has changed materially as it has given greater study to this subject. The many attempts on the part of the Legislature to utilize a certain part of the State lands for the building of reservoirs for the regulation of stream flow met with the severest attacks by this association, until at last it was converted and used its best efforts to secure the passage of the so-called Burd amendment. This amendment provides for the use of three per cent. of the State lands for the purpose of regulating stream flow. The Camp Fire Club was also strong in its opposition to anything that would permit the cutting of the trees in the Adirondacks but under the influence of Gifford Pinchot, it gradually changed its course, so that finally it accepted the so-called Sweet amendment to the Constitution, which amendment provided for the cutting of mature trees on the forest preserves. In fact the wording of this amendment in its final form was the work of one of the members of this club. Also it is interesting to note the change in the attitude of the lumbermen in this period. I well remember that when I first went to the Adirondacks the lumbermen considered fires as an affliction from heaven itself, and with what patience and stoicism they could muster they permitted them to burn and prayed for rain or for a change in wind that would blow the fire on some neighbor's land. To-day this is all changed and it is the organized crews of the lumbermen who are the most efficient in putting out fires in the forest. In the report of the National Forestry Committee of the Fifth National Conservation Congress before referred to, Mr. E. T. Allen, Forester for the Western Forestry and Conservation Association, remarks: "Twenty years ago we had practically nothing. Now we have a great and efficient national forestry administration. Most states have some forest laws, some have good ones, a few are fairly liberal with funds. We have forestry associations and congresses. Lumbermen, once regarded as the opposition, are now showing the most rapid advance of all, for in less than ten years their systematic protection of private timber has grown from practically nothing to cover about 100,000,000 acres, with an increase of 3,000 per cent. in five years."

The Chairman — Will the delegate suspend for a moment? The delegate's time as extended by unanimous consent has now expired. What is the pleasure of the Convention?

Mr. Meigs — Mr. Chairman, if I may have just a word more, I will conclude by quoting from the platforms of the two political parties.

Mr. M. Saxe — Mr. Chairman, I move that unanimous consent be given Mr. Meigs for two minutes.

The Chairman — Without objection, it is so ordered.

Mr. Meigs — Also it is interesting to note the changed attitude of the great political parties in regard to this topic. In 1906 the two great parties of this State inserted in their platforms the following provisions: "From the Democratic Platform, adopted at Buffalo, September 26, 1906: 'We favor the protection by the State of the forest lands of the Adirondack and Catskill parks, the immediate acquisition of all lands within the natural park areas, and such legislation as will at once stop the predatory destruction of timber upon the State lands too long connived at by State officials.'" From the Republican Platform, adopted at Saratoga, September 26, 1906: "We renew the pledges to the people given by the previous Republican State Conventions, insisting upon the preservation intact of the State forest preserve, and its extension as far as may be necessary to conserve in their integrity for the benefit of the whole people of the State, lands and undeveloped water powers, which should not be surrendered to the control of private interests." Compare these provisions with the provisions in the platforms of these parties of 1915: "From the Democratic Platform: 'The Constitution in relation to the preservation of forests should be so amended as to permit a profit to the State, to be derived from the scientific preservation and cultivation of our forest lands, at the same time protecting them against exploitation by private interests.'" "From the Republican State Platform: 'We favor conservation and utilization of the State's forests and waters under conditions which will safeguard the rights and interests of the State. The holding by the State of forest lands should be enlarged and adequately protected against fire and waste.'" Now, Mr. Chairman, I am a party man. I believe in listening to the mandates of the party, unless those mandates contradict the expressed will of the people, but where as in this case the mandates of the party agree with the mandates of the people. I believe we should follow them. I read an editorial from the Syracuse Herald: "The Constitution and the Forests. How can the rigid provisions of the Constitution relating to the forest preserves of the State be relaxed, so as to permit their more scientific management and development while at the same time insuring them perfect protection against the invasion of private interests? This is one of the practical questions that call for the earnest and judicious attention of the Constitutional Convention. One of the really grave problems before the Constitutional Convention is to open the way for scientific care and treatment of our invaluable forest reserves, while raising an effectual barrier against abuse of the discretionary power essential to that wise end. An

ingenious plan for intrusting the management, custody and control of all the natural resources of the State, including the forest lands, within proper constitutional limitation, to a commission of twelve members, representing all sections of the State, serving without compensation for long terms, its organization to be patterned after that of the Board of Regents.

"In the proposed amendment in which this system is incorporated, all the vital restrictions against any alienation of the forest lands by sale, exchange or encroachment, are retained. The plan may be described as one for lodging discretionary authority in an able, large and thoroughly representative board on all questions of management, supervision and regulation, with a view to applying the best scientific methods in the care and development of our forest lands and other natural resources. If the State and its people are to realize the full benefit and utility of our forest preserve, somebody must be intrusted with the necessary power. It would be a counsel of foolish timidity to continue a let-well-enough-alone policy of forest preservation which, in the detail we have emphasized, runs counter to the best expert judgment and to the experience of countries that have administered their forest domains far more wisely, and with far better practical results, than has the State of New York. The Meigs amendment, or something like it, would hold out a rational promise of deliverance from a forest policy which, in the name of ultra-conservatism, has been carried to a mischievous extreme." This proposal of mine was even broader than the Angell plan, which I now approve of as a fair compromise. Many other papers have spoken along the same line. In an editorial in the July, 1915, number of "American Forestry", the official organ of the American Forestry Association, of which Dr. Drinker, President of Lehigh University, is president, the following is stated: "The prejudice against cutting of green timber is deeply ingrained in the minds of New York citizens, due to distrust of her politicians. The situation demands the complete elimination of politics from the management of the State Forest lands. Should the Convention be able to accomplish this, they need no longer hesitate to permit cutting. On the Minnesota National Forest the timber around the shores of the lakes and other points accessible to the public is preserved and protected although the Forest Service has the technical right to cut and remove it. Areas of especial value can be so classified, and preserved in their primitive condition. The remaining areas, inaccessible to the public, can be logged by methods which preserve the forest cover, secure reproduction and prevent waste from decay. These methods have been fully demonstrated on the National Forests. Must New

York, through timidity, close her eyes to progress, and either lock up her forest resources, or imperil them with ill-considered half measures? Now is the time for the State to establish a sane and orderly administration which will bring the Adirondack forests to a plane equal to that of the Wonderful Black Forest of Germany, which while serving as the recreation ground for the entire region, supports hundreds of villages and thousands of persons dependent entirely on the forest industries for their existence." The New York Evening Mail in its edition of July 27, 1915, in an editorial "Tying Up the State Forests," states its opinion of the report favored by the majority of this Committee in the following words: "The Convention Committee on Conservation has decided to recommend the continuance of the present constitutional prohibition against any attempt at scientific forestation of the lands of the State. No timber is to be cut on the State lands except what is dead or fallen. The construction of roads in the forest preserve will be forbidden, as well as the future leasing of camp sites.

"The whole cause of forestry, and to that extent of conservation, has been greatly and stupidly hindered in this State by the inability under which the State authorities rest to make any economic or scientific use of any part of the State's forest, even as a matter of experiment, instruction or example. The simple fact is that the Adirondack forests are not considered by our sapient legislators to be the property of the people, but of the rich 'camp' owners and club men who go up there to enjoy themselves in a luxuriant manner in the summer and to shoot deer and other game in autumn. For their purposes the forest seems well enough in its roughest condition. Scientific forestation makes no appeal to them whatever. We have a chance in the State of New York for almost as great a development of our forest wealth as has taken place in the empire of Germany. The central portion of our two great mountain ranges contains 7,200,000 acres, which is under nominal fire protection. The State-owned forest preserve consists of 1,825,852 acres, to which it is proposed to add largely. But none of this land is under forest management; this, as we have said, is already forbidden by the Constitution. In the meantime we are prevented by the selfish caprice of a few millionaires from realizing so desirable a thing as that which is seen in Prussia, where the 6,700,000 acres of State forest yield a net annual income of \$20,500,000, without any deterioration of the forest whatever." Mr. Chairman, it also provides for a fair classification and division between interests which seem now to be in conflict. It is a step in the right direction. It provides for true conservation as opposed to prohibition of use, and I trust we of the Convention

are wise enough to accept it. Any other plan means waste and want and prevents for another generation any development of progress. And now, Mr. Chairman, what is the alternative proposed by the majority as to the administration of our forest reserves? It is a simon- pure standpat policy. Using as their text a part of the report made by Mr. McClure to the Convention of 1894, they seem to think the people will approve the continuing for another generation the same prohibition of use that may have been wise twenty-one years ago. They seem to deny this State has made any progress. They make no provisions for a constructive policy. They have provided for the renewal of dead trees and dead timber. But these must not be sold. Is there less danger in giving this material away than in selling it? Will less fires be set if it may be given away than if it may be sold? In this age of progress they ignore that progress and prevent proper improvement of these properties. They ignore the lessons Europe has learned at such great cost, and are attempting to prevent for another quarter century any natural use. We have become the heirs of a great property. We have the wisdom for the proper increase of the value of these properties. It is our duty to improve them. Shall we be faithful to this trust and gain the reward of faithful stewards? Then let us admit that conditions have so far changed that we may safely inaugurate a new, a constructive policy, and, trusting our officials, whether as heads of a great department or as members of the Legislature, give them discretionary powers to utilize, but not commercialize, our forest, to make two trees grow where now only one is growing, to respect and care for the varied interests of all the people of all the State.

Mr. Austin — Mr. Chairman, not out of "ignorance or prejudice," as suggested by Mr. Tierney, but after a great deal of careful study and thought, I oppose this amendment by Mr. Angell. I can only skim through what I desire to say, because I wish to confine myself within the twenty minutes at my disposal, and my remarks may be disconnected. I will ask you to pardon me. One of the things which have not been referred to in the arguments, I wish to call to your attention:

Mr. Angell — and he must have laughed inside himself when he called attention to it — seriously asked this body to believe that we should be guided in this proposition by the fact that the Legislature "after mature deliberation" had passed and voted to submit to the people a constitutional amendment permitting the opening of the Adirondacks on all these points. You will recollect that. Now here is the record of the deliberation which the Legislature gave to that subject. I was careful to look it up: In 1913 May 2d was the last day of the session. On April 28th,

this amendment was introduced. It was reported May 1st, next to the last day of the session, and certainly in the Senate — I have not had opportunity to look in the Journal of the Assembly — on the last day of the Senate it was passed without debate, four days after it had been introduced. In 1915 — the past year — the record of this “mature deliberation” is still more ridiculous. The Legislature adjourned, or was supposed to adjourn, at twelve o’clock noon, on April 23d. At one o’clock p. m. on April 23d, one hour after the hour fixed for adjournment, the Rules Committee of the Senate brought in this proposed constitutional amendment, introduced it and reported it at the same time. So far as I know the Rules Committee of the Senate never introduced a bill or rule of this kind in this way before. It was passed without a word of debate in the hurry of the last day of the session. It was then sent over to the Assembly, where it had not been introduced, was handed down at three o’clock in the morning — I was in the chamber when it was done — and it was passed inside of fifteen minutes without a word of debate, without anybody knowing what it was, and they were in such a hurry to pass it that they forgot to put on the clause, requiring its submission to the people this fall, and the Attorney-General has just held that that makes it void and that it cannot go to the people. And that is the record of the “deliberation” with which this matter went through the Legislature, and, to my mind, is sufficient argument to me why this should not pass. Now, just a word further. I have no objection to Mr. Blauvelt’s suggestion; but to build roads in the Adirondacks generally would be the greatest mistake we could possibly make. There are several reasons for that. The first is that it is increasing the fire risk tremendously. Do you know that more than half of the fires are caused by the campers and the fishermen and the like who go into the Adirondacks and the more accessible you make the woods the more of those campers and fishermen go in with their automobiles and the more fires they start and the more forest fires you will have. I don’t want to dwell upon that. I haven’t the time. It is just one of the reasons. Another thing is, that accessibility will decrease the supply of fish and game. Why is it that the fish and game in the Adirondacks are disappearing with astounding rapidity, even at the present time? It is because you and I, or anybody else can get in an automobile at Albany, and leave here early in the morning, go up in Keene Valley, or we can be up at Sacandaga Lake, or be up at Old Forge, or Lake Placid, or Saranac Lake, or Schroon Lake, or Elizabethtown, any of those places and fish or hunt all day and be able to get back to Albany that same night. That is the

reason why the woods should not be made too accessible, and that is one good reason why we should not build roads up through the Adirondacks. It increases the fire risks, and diminishes your supply of fish and game.

Another thing. You build these roads up through the Adirondacks and just as sure as you build them the trolley and railroad will follow on those roads, and that is the real reason, gentlemen, that people who are interested in the lumber business want these roads built. They want an opportunity to get at the hardwood by trolley or by good roads, or something of that sort; and above all things, if we are not going to protect anything else in the Adirondacks, we must prevent the taking out of this hardwood, which is all that is left of our once great forest. Now, so far as the sale of lands is concerned, these isolated parcels out of the Adirondack tract, I am not going to dwell on that, because I haven't any objection to it. I think, under proper restriction, it should be done. As to the camp sites, just a word or two about them. The Conservation Department has within a few months published an interesting pamphlet called the Resources of the Forest Preserve, and it is the first authoritative information we have had in many years upon what we actually own. They say, without giving all their statistics, that within the forest preserve there are 1,075 miles of water frontage available for camp sites,—no, there are 1,075 miles and 587 miles of that is available for camp sites. At two hundred feet frontage, that would form eleven thousand six hundred available sites, and everybody agrees that not all of those sites upon the lakes should be leased, that, at least, half of them should be retained for the campers who have gone there and put up their tents on those lakes and streams, so that at least half should be retained; that leaves 5,800 sites which would remain and be available for lease. Now, there are only ten million people in the State of New York, and I assume that out of the ten million there are probably nine million, nine hundred and ninety-nine thousand who are almost as poor as I am and it is a new kind of poor man,—it must be a new kind of poor man, if he is going to go in and get the benefit of this dream of camp sites. It is the greatest opportunity for graft that has ever been presented. You can see the scramble there will be. The wealthy man, and I am not decrying the wealthy man, but it will be that kind of a man who will gobble up the sites and will build a palace upon it if he can get what will practically amount to a permanent lease; and all this talk about five-year short term leases is absolutely impossible; you are not going to benefit the poor man by it, because what poor man of your acquaintance can afford to go up into the Adirondacks and buy a lease for fifty,

seventy-five or a hundred dollars a year for his camp site, and build upon it a permanent building, if he has got to abandon it in four or five or ten years. You know it cannot be done. It is only the man of means who is going to be able to avail himself of the camp site proposition, if it should be passed.

Now, I want to say a few words about the removal of timber, because we all know that is the meat of the cocoanut in this proposition. The lumbering interests want the trees, and to me it arouses amusement for Mr. Meigs to seriously state before this Convention that he is not urging, or does not want the State to lumber those lands to make any money out of it, but he, in an altruistic attitude, asks to lumber the wood, take out the trees for the benefit of the forests. Now, it sounds big, gentlemen, to have it said that the State of New York owns a billion and a half acres of forest lands. How many know that of that forest land there are only 75,000 acres of virgin forests? Every other acre that the State owns has been lumbered over, not once, but most of it two or three times, and the great proportion of the land that we now own has been abandoned by the owners thereof within the past forty, or at the most fifty years, simply because when having lumbered it and taken all the wood off of it, it was not worth paying the taxes upon. It has been absolutely abandoned, and everybody knows that to replace a forest in its entirety takes a term of 100 years even in Germany, where you have the richest kind of a soil, and that it takes longer in the Adirondacks, where the soil is poor. Now I have been commissioner and I know very well that when I was commissioner five years ago, estimates were given to me time and time again that the State owned 14,000,000,000 feet of merchantable lumber in the Adirondack region. I thought that was so. That was only an estimate, and now this year, for the first time, we have a somewhat accurate survey of what the State owns. The Conservation Department, after a year's work, has published what they called a Survey of the Forests, and it is most astounding to find that this Conservation Department, after having men at work upon this proposition for a year, now reports that the State only owns 8,000,000,000 feet of lumber, of merchantable timber, in the Adirondacks, including the pulp wood. Of that wood, that 8,000,000,000 feet, only 4,500,000,000 feet of it is soft wood, including pulp wood. Just think of it. We only own 60 per cent. of what we thought we owned for years. Now, you want to remember that the American nation is the most profligate user of timber there is in the world. The United States Forest Survey says that we annually use 250 cubic feet of wood, per capita, per annum; while Germany, you will remember, only uses thirty-five feet per capita, and France only

twenty-five feet per capita, per annum; and when you talk about the resources of the Adirondack region and urge that opening it up would have an effect upon the available supply, I ask you to remember this: that the United States uses annually over 52,000,000,000 feet of timber, not including fence posts and rails. Just remember that every stick of merchantable timber in the Adirondacks, if cut to-day, would not supply the United States for two months, and yet they say to open it up would have some effect upon the available supply and would relieve conditions and lower prices. If you cut every stick of wood in the Adirondack forests and the Catskill forests to-day, it would supply the State of New York for only thirteen months. Now those are the facts of the case, so far as the effect which this would have upon the available supply is concerned.

Now Mr. Meigs says that if the Federal Government can adopt this plan of forest operations, why cannot the State of New York do it? Well, you can be told very quickly. The Federal Government at the time it began its forest operations, a very short time ago comparatively, owned 165,000,000 acres of land, of which 130,000,000 acres are practically virgin forest. Now, do you believe for a moment that you can adopt in New York, for 1,500,000 acres of land, that has been lumbered two or three times, the same processes that are adopted by the Federal Government in utilizing 130,000,000 acres of virgin forest, as against our 70,000? Why, of course, you cannot, and everybody who stops to consider it, knows it. Now, it has been said that there has been a great increase in scientific forestry in the past two or three years. There has been, and I am glad of it, but, gentlemen, with the increase in the study of scientific forestry, there has not been any increase in the forests of the State of New York. Scientific forestry is increasing, but our forest supply is diminishing, and in the Conservation Report for the past year, and in the statements of all authorities, it is agreed that, with the Adirondack region closed, the cut in the State of New York to-day is between five and six times the annual growth. Now, if that is true, and there are only 50,000,000,000 feet of timber in the State, with the annual cut exceeding five times the annual growth, where are you going to come out? Where are you going to come out if we permit this remaining preserve to be opened up? Now, I wish very much that I could dwell upon this subject longer, but my time is running short, and I cannot. I do want to say a word about the dead and down timber. They urge that it is an economic waste to allow the dead and down timber to lie where it is and to rot. I wish to say to you gentlemen that it would be an economic blunder to remove it. Everybody who has studied the geology of

the Adirondacks knows how the soil is formed. It was pure primeval rock originally. It was only by the mosses and lichens affording a foothold for vegetation gradually increasing year by year, that finally a forest took growth and the small bushes come and they die down and rot and form ground or soil finally sufficient to support a forest. And it is very shallow soil, as everybody knows. It is burned off entirely when you have these fires, and nothing left but these rocks. Now these dead and down trees have an economic value right where they are. They rot and decay and form the soil and humus. And if they are not particularly valuable where they are, they are blown by the winds and they lodge in these barren areas — and it is only in that way, by the action of the elements for thousands of years that a firm soil on these denuded areas of the Adirondacks is obtained. Except where necessary to remove these trees for reforestation and fire prevention, they should be allowed to lie where they are, and this humus, everybody knows, it is the greatest water-retaining substance known. It retains water much more readily than the ordinary soil or earth, and it is that of itself which retains the waters readily in the Adirondack region. Now, for only just a moment I would call your attention to one or two evidences of the effects of deforestation with which you are all doubtless familiar: The northern coast of Africa most of you know is now practically a barren waste. Two thousand years ago — it sounds like a long time, but there are two thousand years ahead, as well as two thousand years back — two thousand years ago it supported the finest vegetation in the world, and now, it is a barren waste.

In the seventh century, Tripoli supported a population as large as the State of New York — only twelve hundred years ago. To-day its population is less than one per cent. of that. Assyria, once the flower-garden of the world, called “The land flowing with milk and honey,” is now a barren waste. So is northern China and many other districts, with which you are all familiar; and all directly traceable to the effects of deforestation. Now, in our State, just one instance: Sixty years ago the water of the Hudson was clear, down to Peekskill. It was fresh water down to Peekskill. To-day it is brackish at Tivoli, seventy miles further north. You all know there is a decrease in the supply of water flowing out of the Adirondack region, and if conditions go on, it won't be long before it is brackish right here in our City of Albany. In Professor Clark's *Hydrology of the State*, published in 1904, available to anybody in the State Library, it is stated that it is an undoubted fact that since 1850, sixty-five years, the mean flow of the Hudson river had decreased at least four feet, and that that was directly traceable to timber cutting

in the Adirondacks. Now, statistics could be recited for hours, gentlemen, to show the actual results of deforestation. Now, there is not any class of people in this Convention or in the State of New York, to whom this subject should be as dear or as close as it should be to the people of the city of New York. There is not a doubt that in the years to come the city of New York must go to this reservoir in the north for its water supply to drink. And if ever the people of New York city needed the gift of seeing into the future, they need it now, and no class of its citizens more than those of New York should be more bitterly opposed to this proposition. Just as the farmer needs the "complaining brook that keeps the meadow green," so the citizens of New York need the water stored in the reservoirs in the northern Adirondacks, filled to the brim as they are with splendid water. Now, my time has expired, and, Mr. Chairman, in conclusion, I would say I am not a fanatic on this subject, by any means. I am deeply in earnest about it; deeply in earnest. If ever the time comes when we can safely open the Adirondacks and allow some timber to be cut from that territory, I will see it as quickly as any man; but for the present, I say, gentlemen, I would not permit a single living stick of timber to be cut, and I would not permit a dead or down tree to be taken out or carted away and sold or have anything else done to it. But I would allow those dead and down and living trees to stay where they are; to die if they may, and fall and rot, and, as they have done for countless ages, form a new soil out of which a new forest is ever springing, and form a humus from which streams of crystal water flow.

Mr. Parsons — Mr. Chairman, I hope that the time will come and come soon when some of the things sought by the amendment suggested by Mr. Angell will be possible, but I am unwilling to authorize this until I know that the department which we are creating is a department which in its personnel will do those things purely in the interest of the general public.

Experience in this State and experience in the country at large with its national forests shows that until you have developed a trained, disinterested, civil-service personnel to deal with your forests, you should allow no cutting, no use of that water whatever for commercial purposes. Now, we are erecting a department. If that department disregards local interests, if it selects for its employees only the trained, civil service men, if all questions of jobs for locality are eliminated, then we will have a body which can be trusted. Now, it may seem ungracious to suggest that local interests can possibly be against the wisest use and management of the forests. I am not so familiar with the situation in this State as I am in connection with the public lands of the national government, but you may recall that about ten years ago there was

appointed a commission to investigate the frauds in public lands, and it was found that the people who committed the frauds were the people of the localities; the storekeepers, the school teachers. There was no public opinion to support the strict interpretation and strict administration of the land laws. Now, I hope that the situation here in this State is not as bad as it was in the Western States, but we have had in this debate illustrations that some of that same spirit has existed in this State. Mr. Austin alluded to the management of our national forests. The reason now why we permit cutting there is because we have this personnel developed by Gifford Pinchot, and as long as it remains free from local influences we can trust it. For six years I sat in Congress and I heard the men from the Western States, most of them, rail against this scientific personnel. "Why should a man from Massachusetts be employed on the forests of Colorado?" The answer was to be found by anyone who examined how the State of Colorado, which under the law creating the State received from the National government for educational purposes, sections 16 and 36 in every township — how the State of Colorado managed its sections 16 and 36. Why, they gave them away. I have been in national forests and seen how on the national forests they were selling the timber under the restrictions of the National Forestry Service, for several times what the State had sold the land for alongside of the same growth of timber. Now, I say to my friends from the North country that I believe that some utilization should take place, but it must not take place — the people will not wisely trust its taking place until this scientific, well-trained, locally-divorced personnel is developed. There will be great friction. It is almost impossible to resist the local appeal. This department, if it is well organized from the start, will do it; and if it does it, the thing which you wish will come very soon, because there is a law about departments as there are laws about people. They never erected the department yet that did not wish to extend its powers and as soon as it thinks that it can handle these things, then it will come to the Legislature to get the power to do the things which we now wish done. But, first, let us see that the department proves one that we can absolutely trust.

Mr. Clinton — I expected to speak about an hour and a half but all I know of the details and great deal more has been so thoroughly discussed that I will detain the Convention but a moment or two. Mr. Meigs has the impression upon his mind, and has endeavored to convey it to this Convention, that the action of the Convention of 1894 was hasty. We all know that the action of that Convention became a portion of the Constitution of the State by the approval of the people and we all know that it is far more rigid than the

amendment which we propose by section 2 of this proposal. I wish to disembarass the delegates of the idea that the action was hasty and in order to do that I wish to point out what that Convention had before it. In 1885, the Forest Preserve Act was passed. The question of leases came up in 1886 and '87. It was thoroughly discussed in the Legislature, and the Legislature refused to entertain the idea of leasing within the Forest Preserve. Then for a series of years followed questions of the purchase of lands, the creation of the Adirondack Park; the act of 1893, which combined the acts of 1885 and 1892, organizing the Adirondack Park within the Forest Preserve. The act of 1893 authorized the cutting and sale of timber. Now keep in mind that that is just one year before the Convention of 1894. Camp sites had been authorized in 1885. There were various addresses from the Executives to the Legislature of this State in which all these questions were discussed. The whole subject had been covered as thoroughly as it has been covered to-day and last week in this Convention. That is what the Convention of 1894 had before it. They cut out the leases, which involved camp sites; they cut out the cutting. They announced the principle that the forests should be maintained as wild forest lands. And they did not do that on the spur of the moment. They did that with this whole record before them. Now, one thing more, and I am done. That amendment attracted the attention of the people and it was thoroughly discussed and the vote was something over 300,000 in favor of the restricted use of the Adirondack Park and the Adirondack Preserve. Now, Mr. Chairman, there is not a thing that has been said here in three days that has not been said and discussed and thought over by the Committee on Conservation at least three or four times. I could appeal to the Chairman to sustain me in that statement. There is not an argument here but what has been considered and the basic principle on which the Committee has acted is exactly that stated by Mr. Parsons, that we believe some of these things should be done but that they should not be done until a policy has been established through the creation -- not merely the creation of this commission and the appointment of its members, but through a personnel which would work out a policy and a management that would open the doors safely to the people to consider these other subsidiary matters.

Mr. Marshall — If I were asked to state what the most important action of the Convention of 1894 was, I should say without the slightest hesitation that it was the adoption of section 7 of article VII of the Constitution which preserved in their wild state the Adirondack and Catskill forests. And if I were asked to state to-day the most important question which is to be acted upon by this Convention, I should say unhesitatingly that it is the section which we are now considering.

It is, of course, important to preserve the scenic beauties of the Adirondack and of the Catskill forests. It is important to preserve the public health as well, but it is of infinitely greater importance to preserve the waters of the State and to protect the agricultural interests of the State. And it is as certain as anything on earth can be that if we in any way relax the limitations which we are now seeking to place upon the Adirondacks, our waterways and our agricultural lands are doomed. The value of these forest preserves lies in the fact that they constitute great reservoirs for our water. They are, as it were, huge sponges which hold the water as it flows and allow it to flow away as it is required. We have been guilty of the grossest carelessness and neglect in our past history. In the early days of this country there seemed to be a struggle to give away our forest lands. Millions of acres were sold at a price of five cents an acre, so that in 1872 the State owned not more than 40,000 acres of forest land, and it was not until after the commission which has been referred to in this debate, namely, the commission of which Mr. Edward M. Shepard was a member, and at the head of which was Professor Sargent, that the people began to open their eyes to the necessity of preserving the forests, in order to preserve our waterways, and in order to protect our agricultural interests. Why, only a short time before the Convention of 1894 convened, as I learned from Mr. Meigs, a tract of 400,000 acres of virgin forest was sold at the rate of one dollar and a half an acre. Now there is no middle course with regard to this question. It is not a question merely as to preserving a section of these forests. It is a question of preserving them in their entirety. It is not only a question of preserving what we have, but it is a question of adding to our forest domain, not slightly but largely, so that it will cover the entire region, in order that the Hudson river may not run dry, in order that the Mohawk may not run drier than it is, in order that our streams may not subside, in order that the subterranean flow of water shall not fall more than it has. Mr. Smith in his very able argument the other evening called attention to the fact that in the last thirty or forty years the subterranean water level throughout the State had fallen three feet; and that means, if it continues, the transformation of our fertile fields into an arid region. And there is but one thing to preserve us from such a fate, and that is to preserve the forests as a pristine forest, as a wild forest, and not to allow lumbering to be carried on within it. It is a very beautiful idea to speak of those different areas, to divide between one and another portion of the forests, but for the purpose of preserving our water supply one part is just as important as another. I do not desire in this argument to inject any question

of personality, and yet it is important for us to observe who is asking for this amendment which changes entirely the policy of this State. Mr. Angell has introduced this amendment. I have the highest regard for him, and yet Mr. Angell admits that he is the counsel for one of the greatest syndicates owning lands for lumbering purposes in the Adirondacks that is to be found within the State. His motion is seconded by Mr. Meigs, for whom I have the highest respect, but Mr. Meigs is the president of the Santa Clara Lumber Company, one of the most important lumbering companies operating in the Adirondacks; and yet he speaks against the commercialization of the Adirondack forest. I agree with him. But what is the idea which underlies their thought of creating these zones and allowing from one of the areas the cutting of timber and trees that are thereon?

Mr. Parsons — Do not their clients own timber lands?

Mr. Marshall — They do.

Mr. Parsons — And, therefore, are not their clients' timber lands more valuable if the State timber lands cannot be cut?

Mr. Marshall — But their idea is that their clients' own timber lands are rapidly disappearing before the axe, and they are seeking to increase the amount of land from which timber may be taken.

These gentlemen have spoken about preservation, about cutting mature timber, and yet we find in the records of the case of *The People against the Santa Clara Lumber Company*, 213 N. Y., in which Mr. Angell was counsel for the defendant, and the defendants, not only the Santa Clara Lumber Company, but Messrs. Finch and Ostrander, well known in our lumber interests, were instrumental in making an arrangement which was set aside by the Court of Appeals, between the State and these defendants, and these defendants reserved unto themselves the right at any time within eight years, from October 21, 1904, to cut and remove from all this land the available timber down to eight inches in diameter on the stump at the time of cutting. Conservation, preservation, scientific forestry, is what they say when they talk. Yet their contract called for the cutting of soft wood timber eight inches in diameter. We have heard a great deal about scientific forestry, and yet the reports of our State give us further information as to what can be accomplished under the term "scientific forestry." I hold before me the decision in the case of *the People against the Brooklyn Cooperage Company*, in 187 New York, where an arrangement was made with regard to the cutting of lands which were acquired by the State for the purpose of encouraging scientific forestry where the contract was made that the University agreed to cut and deliver at its own expense in each

and every year of the term of fifteen years of the agreement, such quantities of wood in logs and cord wood as the company may give notice that it shall require to be cut during the next following season, and the consequence of that was, or the meaning of that was that this tremendous tract of thirty thousand acres was to be cut down flat from one end of it to the other, in order that the scientific foresters might start a new forest which might mature a hundred years from the time that the contract was entered into. That is scientific forestry.

Now, our friends say that the department may provide for the sale and removal of timber, mature timber or timber detrimental to forest growth upon the lands of the State forest preserve or any part thereof.

Now, will the department go into the business of forestry? Will the State of New York encourage any lumbering operations? I trust not. We have not yet come to that point where the State is to engage in that business. Well, if the State is not to do it, who will do it? Who is to remove this timber? Would it not mean that the department would be called upon to enter into contracts with private institutions who are equipped to deal with this lumber question in the Adirondack region, and to sell to them, or to contract for the removal of mature timber or timber detrimental to forest growth from the land? Who else would bid? Who else would be equipped to deal with the subject? Who could do it better than the gentlemen represented by Mr. Angell and Mr. Meigs, and the others who are engaged in practical lumbering in the State of New York?

I think it is very evident that there would be nobody else who would be in a position to do it. They say that it is the mature timber. What is mature timber? Is it eight inches in diameter? Is it four inches in diameter, that Mr. Cobb spoke about, which could be chewed up by the chemical men? What is timber detrimental to forest growth?

It has been suggested in the Committee that those are trees which are diseased, but I am informed by the Dean of the College of Forestry that under such a contract, or under such a term, eighty per cent. of all the trees in the Adirondacks could be cut down. What would you have left after you have adopted a provision of this character? Nothing but a howling wilderness. Not a wilderness of trees — wild forest trees — but of stumps, enough to make one's heart sick to behold them.

Now, we have the suggestion made that we have reached a different time in our history. What was good forestry was not known in 1894. At that time it has been said we were wild, and in a moment of rage we adopted this proposition. A moment of

rage. After several months of thought upon the subject, after there had been most careful thought and consideration of the question, by a vote of 122 members of the Convention in favor and not one against, this amendment was carried; the only amendment that went through the Constitutional Convention of 1894 by a unanimous vote. That was not a matter of haste. It was a matter of deliberation; not only deliberation then, but subsequent deliberation, because the enemies of the forests were not satisfied with the vote that was taken at that time in 1894. They claimed that that forest amendment went through with a rush in connection with the other matters, and in 1896, and in subsequent sessions of the Legislature, an amendment was passed by two separate Legislatures with regard to this subject, whereby it was sought to modify this provision, so that the Legislature might authorize the leasing for such terms as it may fix by law, of a parcel of not more than five acres of land of forest preserve to any one person for camping and tenting purposes; also the Legislature may authorize the exchange of land owned by the State situate within the forest preserve; also the Legislature may authorize the sale of lands belonging to the State situate outside of the forest preserve, but the money so obtained, and so on.

Now, after three years of cool thought, this thought being a question before the people of the State of New York, what did they do? They voted in the most unquestioned way against the proposition. Three hundred and twenty-one thousand four hundred and eighty-six votes were cast in favor of the proposed amendment and 710,505 against it; a majority of 389,019, or 70,000 more majority than there were votes cast in favor of that proposition; and are we here in the face of this phenomenal vote, the greatest ever cast in the State of New York on any amendment ever presented to the people, are we here to turn our backs to the voice of the people who by this tremendous vote, by this enormous majority, decided to leave the Constitution as it was enacted with respect to the forests and as the Convention of 1894 adopted? And yet gentlemen come here once more and ask to have leases of camp sites, to exchange lands within the Adirondacks, to sell lands outside of the Adirondacks, to make these several provisions which are a relaxation of the principle of preservation and conservation which is set forth in the Constitution. It would seem as though we were mere children, if we were not to profit by our experience and to benefit by the experience of the past. It is stated that Mr. Graves, national forester, has indicated that the time has come when there may be a change on this subject. When did he say that? I have before me his address at the American Forestry Association banquet, held on

the 11th day of July, 1915, in the city of New York, which is published in *Field and Sport* as follows:

"But I have very grave question whether the State is ready immediately to inaugurate the policy of commercial cutting on a large scale. The State holdings have not yet been blocked out and the work could not be planned as intelligently as with a complete unit to handle. Conditions some years hence will permit a better silviculture than to-day," and that is in addition to what, or aside from what Mr. Parsons has said:

"Fire protection is not yet adequately provided for. Moreover, I question further whether the people of the State feel that they want to sell their timber. It is not after all primarily a question of public finance. The people should decide whether they are willing to expend the necessary money for taxes, protection and administration, with little money return, to ensure the public benefits from the forests in water resource protection and to maintain a public playground. Personally, I regard the returns in general public benefits as so great as to amply repay all that it now costs the State to maintain the Forest Preserve. At the same time the forest is increasing in value. The virgin stands are not increasing in volume, for growth and decay about balance, but they are increasing in value. The partially lumbered lands are increasing in volume, and, as the virgin stands, the timber is growing in money value. And some increase is taking place on the denuded lands, as the trees gradually creep in through natural reproduction. Is there then any immediate need of making commercial sales either because the State cannot afford the annual carrying charges or because of any industrial urgency?"

That is the question. I ask, is the State of New York so poor that it has to take any chances with respect to practical forestry in its forest preserve? Why, the United States of America, with all the country behind it, with all the experience of trained foresters, with a virgin forest at its disposal, has a return from all sources in respect to water rights and everything else of \$2,437,710, whereas it cost the government \$4,750,000 a year. The policy of the government as indicated by the Weeks bill, when the Government appropriated eleven million dollars for the purpose of purchasing land in the White Mountains and the New England states in order that they might preserve the water powers which had their origin in the White Mountains and to protect the people of that region from the consequence of denudation of the forest land is the reverse of this proposition. In New York State any one who has intelligently observed the operations in the Adirondack forests is grieved to see how mountain top

after mountain top is being denuded, how the bare rock begins to glisten through the forest cover, and it is only a question of a few years, if these propositions are read into the Constitution under the guise of reforestation of a liberal policy, a more liberal policy in connection with forestry matters—it is only a few years, if that policy should be adopted in section 2 of this article before we will have to chew the bitter cud of reflection and future generations will find themselves precisely where to-day are found the people of China, Mesopotamia, of Syria, of Northern Africa, and in those nations where the foolish policy which is sought to be incorporated in this amendment has been observed.

The Chairman—The hour of four-thirty having arrived the amendments which have been proposed and not previously acted upon will be voted upon in their order, without further debate.

The Chair suggests that the first vote before the Convention is that upon the general amendment proposed by the gentleman from Warren, Mr. Angell. If there is no objection that order will be adopted.

Mr. Angell—Mr. Chairman, I ask that the vote be taken on that amendment separately, the first vote on section 2, which provides for the classification of the Forest Preserve, and second on section 2-a, and then on section 2-c.

Section 2-a relates to the highway matter and is covered also by the amendment of Senator Blauvelt.

The Chairman—Is there objection to voting upon this amendment, subdivision by subdivision? If not, the question arises upon the subdivision numbered section 2, and appearing upon the General Order calendar.

Mr. Winslow—Mr. Chairman, I ask that the Secretary read the proposed amendment.

The Chairman—The Secretary will read so much of the amendment as is numbered Section 2.

The Secretary—

Section 2. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed. But the Conservation Department shall provide for the survey and classification of all the lands in the forest preserve into the following areas:

First: The lands upon the mountain tops, and the lands in and contiguous to the lakes and major streams, and such other lands as for any reason the department shall determine should be so classified.

Second: All the other lands of the State within the forest preserve.

The classification shall be made after such public advertisement and hearing as the department may prescribe and it may, after like notice and hearing, transfer lands from the second into the first area. The department may provide for the sale and removal of timber, or any part thereof, that is mature or detrimental to forest growth upon the lands, or any part thereof, in the second area, under such conditions as it shall prescribe in accordance with the principles of scientific forestry; but such lands shall remain as forest lands and the forest cover thereon shall be maintained and perpetuated.

The Chairman — Are you ready for the question? All those in favor will signify by saying Aye, contrary No. The motion is lost.

The Secretary will read the second subdivision, No. 2-a.

The Secretary — The department may authorize in its discretion the use of lands belonging to the State in the forest preserve for highway purposes.

The Chairman — You have heard the amendment. Are you ready for the question?

Mr. Meigs — Mr. Chairman, is it out of order to amend that by inserting the words, "not exceeding one per cent."?

Mr. Wickersham — Mr. Chairman, I make the point of order that under the rule it is not the time to offer an amendment. Under the rule the time has expired.

Mr. Brackett — Mr. Chairman, what was the decision of the Chair on the point of order?

The Chairman — The Chair has sustained the point of order, under rule 27.

Mr. Brackett — Mr. Chairman, does that rule apply to the Committee of the Whole at this time?

The Chairman — Absolutely.

Mr. Brackett — Mr. Chairman, I am inclined to take exception to the ruling of the Chair.

The Chairman — In order that the delegates may understand the rule, I will read what it says, " * * * When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate." All in favor of the amendment will signify by saying Aye, contrary No. The motion is lost.

The Secretary will read the next amendment, section 2-b.

The Secretary — The department may lease camp sites of limited area for limited periods, on restricted portions of the second area of the forest preserve, upon conditions to be determined by it.

The Chairman — Those in favor will signify by saying Aye, contrary No. The motion is lost.

The Secretary will read the next proposed amendment.

The Secretary — 2-c. The department may sell lands outside the limits of the Adirondack and Catskill parks as now established by law, except lands contiguous thereto, and the islands in, and lands adjacent to Lake George. The proceeds of such sales shall be kept in a separate fund to be used only for the purchase of lands within the limits of said Adirondack and Catskill parks.

The Chairman — Those in favor will signify by saying Aye, contrary No. The motion is lost.

The question now arises on the amendment proposed by the gentleman from Rockland, Mr. Blauvelt. The Secretary will read.

The Secretary — On page 3, line 5, after the period, insert in italics the following: "Nothing herein contained shall prevent the State from constructing a highway from Long Lake in Hamilton county to Old Forge in Herkimer county by way of Blue Mountain Lake and Raquette Lake."

The Chairman — Those in favor of that amendment will signify by saying Aye, opposed No. The motion is carried.

The question now arises upon the motion of Mr. Mereness, if he still presses it; it is covered by one of the amendments introduced by Mr. Angell.

Mr. Mereness — Mr. Chairman, I don't know as I care to press it against the wishes of the Committee, I will withdraw the amendment unless the Committee thinks it ought to be put into the Constitution.

The Chairman — The question now arises on the amendment of Mr. Whipple. The Secretary will read.

The Secretary — In section 2, add "except for domestic use for firewood by residents within the State park."

Mr. Whipple — Mr. Chairman, I ask that the Clerk read the italicised words, commencing in the first line of page 3 so that it shall be understood what it is.

The Secretary — "The commission is, however, empowered to reforest lands in the forest preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely, but shall not sell the same, except for domestic use for firewood by residents within the State parks."

The Chairman — Those in favor of that amendment will signify by saying Aye, opposed No. The motion seems to be lost.

The Chairman — A rising vote is asked for.

Those in favor will signify by rising. Those opposed will rise. The amendment is lost. The vote is now upon the approval of

Section 2 as amended. Those in favor will signify by saying Aye, opposed No. The motion is carried.

Mr. Meigs — Mr. Chairman, are any amendments possible to Section 2 of the report of the Committee which have not been voted upon? There has been no general discussion on Section 2.

The Chairman — Section 2 has been acted upon favorably by the Committee of the Whole.

The question now rises on Section 3.

Mr. Marshall — Section 3 is precisely in the terms of the present Constitution. It is known as the Burd Amendment, adopted two years ago, the only change being it is put into a separate section; the word "but" is eliminated at the beginning of it so that it is treated as a separate subject. It relates to the reservoirs of water, solely, within the State forests. I move its adoption.

The Chairman — All in favor of the adoption of Section 3 will signify by saying Aye, contrary No. The motion is carried.

Mr. Marshall — Section 4 was inserted in this article in order to deal with an existing situation which affected the city of New York in the Catskill preserve. In constructing the Ashokan dam, the city had occasion to flood two small parcels of land aggregating, I think, about twenty-five acres — no, ten acres — and it also will be obliged to lay a pipe line, a tunnel through another small tract of land. It is believed proper that the city should have that privilege upon making just compensation. The situation is exceptional. There are two amendments and there are two parcels now covered by them. On line 6, page 4, and line 7, page 4, there is used the word "township." That phrase is not used in our law, that word being "town" instead of "township," so I move that the word "township" be stricken out and the word "town" be substituted; and in line 7, the word "township" be eliminated and the word "town" be substituted.

The Chairman — You have heard the amendment proposed by the gentleman from New York. Those in favor will signify by saying Aye, opposed No. The motion is carried.

The question now arises on the approval of the whole of Section 4. Those in favor will signify by saying Aye, opposed No. The Section is approved.

The question now arises upon Section 5.

Mr. Leary — Mr. Chairman, I propose the following amendment to Section 5: In line 9, page 4, strike out "make provision" and insert in its stead "provided by bond issue or otherwise a sum of not less than \$500,000."

Mr. Chairman, my purpose in urging this amendment is due to the fact that for the past twenty years an average of \$25,000 annually has been appropriated for reforestation in this State.

The Chairman — Will the delegate please send his amendment to the desk?

Mr. Leary — The Convention of 1894 might justify itself in relying on the Legislature to make adequate provisions for the work of reforestation, but to-day we find the State forests have less growing timber than they had twenty years ago. I am offering the Proposed Amendment for the purpose of guarding against the possibility of a continuance of the present conditions. The Chairman of the Finance Committee only two days ago showed that \$100,000,000 has been appropriated in the past ten years for the construction of new highways and that one-third of the amount expended according to estimate is worn out in from seven to ten years. At that rate the entire sum will be consumed within thirty years. That appropriation is represented by bonds maturing fifty years from date. Consequently future generations will be paying interest and contributing to the sinking fund for a period of twenty years on bonds from which they derive no benefit whatever. It has been demonstrated here that the present State forests representing an initial expenditure of about \$4,000,000, acquired for the most part in the nineties, represents to-day a valuation of \$40,000,000. If we at this time provide for the next twenty years an annual bond issue of \$500,000 based on the ratio of increase in valuation of the original forest investment it ought when the fifty-year bonds fall due to represent an additional increase in the forest valuation of \$100,000,000. By doing this we will provide a valuable asset for future generations that will in a way off-set the deficit that has been imposed upon them by the past expenditure in highway construction.

I believe this amendment would provide a substantial increase in the value of the forests and at the same time greatly increase the water supply of the State.

I trust the amendment will be adopted.

Mr. Byrne — Mr. Chairman, I think it most unwise to insert this provision regarding \$500,000 in this article. I would agree with it entirely, if it lay with me personally, but if we put that amount of money in, the people of the State have not heard this discussion, it will never be ably presented to them as we have had it here and it is most unwise to fix any sum of money. Surely we can leave it to the Legislature to follow out our wishes in that regard. I don't think that amendment should carry.

Mr. Dunlap — Just a word in regard to that matter. We considered the proposition of the gentleman from New York very carefully and at first acceded to his wishes and put in that provision. On further consideration we came to the conclusion that

it was a bad thing to do. There is no such provision in the Constitution in any other part and never has been, either appropriating or directing the Legislature to appropriate a specific amount every year and I hope this amendment will not be adopted.

The Chairman — The question arises on the motion to amend. Are you ready for the question? Those in favor will signify by saying Aye, contrary No. The motion is lost.

Mr. Leary — I move to amend section 5 by striking out the whole paragraph, for the reason that it does not question the present power of the Legislature, neither does it take any power away from it. It is simply a reiteration and there is no need for it to be incorporated in the Constitution by having a provision of that kind in the Constitution in this place.

The Chairman — The motion is made to strike out the entire section. Those in favor will say Aye, opposed No. The motion is lost.

The question now arises on the approval of the whole section.

Mr. F. L. Young — I wish some member would explain the reason why the mandatory "shall" is used in the third section instead of the word "may".

Mr. Byrne — It is intended that they "shall" do it.

Mr. Marshall — The sole purpose of this Committee in phrasing this section was to indicate the general policy of the State of favoring the purchase of land within the Adirondack and Catskill parks and the reforestation of the land. It has been indicated in the debates so far that the State has not an actual inventory of its forests, and really does not know what it owns. It is not known what land is owned and therefore the making of a boundary survey was specifically referred to. It was also believed that a definite policy of reforestation of land should be inaugurated and that the policy which was suggested originally by Governor Cleveland, in 1884, and all other Governors since, and by those who have given study to the subject, of acquiring as much land as possible in the Adirondack and Catskill preserve should be adopted and perpetuated.

Now, of course the word "shall" in this provision, although mandatory, is very indicative of an earnest purpose on the part of the people of this State, if they adopt this amendment that there shall be something done in this direction. There is no way of mandamusing the Legislature, and the amount is not specified. Personally I should be very glad to have the amount specified but I recognize that it is not a practical thing to do and it is believed that "shall" is merely indicative of an earnest purpose.

Mr. Clinton — If the word "may" was inserted in place of

"shall" the entire section would be nonsensical because the Legislature has the power. That language was adopted from the provision of the Constitution pertaining to canals, which was the provision, and has been for years, that the Legislature shall annually appropriate sufficient for the maintenance and operation of the canals, and as a declaration of policy it has never failed to have its effect. The commission, if the people follow our advice, can go to the Legislature and say, "It is the mandate of the Constitution that you shall make provision." It adds strength to the application, which would not pertain at all to a declaration by the commission of the policy, because that would be the opinion of the commission and this is the mandate of the people.

The Chairman — The question now is upon the approval of Section 5. All those in favor will signify by saying Aye, contrary-minded No. The amendment is approved.

Mr. Lindsay — Mr. Chairman, the suggestion I was going to make, and I was going to make it for the benefit of the Committee, is that we are liable to do by this section what we have done in the issuance of bonds, make the Legislature provide funds when they may not need them. Here is twenty years of annual appropriation that they must make. I was going to suggest inserting after the words "the Legislature," the words "if requested by the department."

The Chairman — Is there a motion to reconsider? If not, Section 5 stands approved.

The question now arises upon Section 6.

Mr. Whipple — I move to strike out Section 6 entirely and make "Section 7" read "Section 6."

Mr. Whipple — I do that because it seems to me almost as though it would be committing a crime on our part to recognize a wrongful act by a law in violation of the law and the Constitution. It occurred to me that there was one of two remedies; either camp sites generally, which has been taken care of or that it must be stricken out. I have taken the pains to gather this information, which I will give you in a breath, about these people. One hundred and fifty-two of those who occupy State lands I obtained releases from, and they are filed in the Conservation Department. In them they acknowledge the State's title to the land. That was done in 1910. There are actions brought now against forty-seven and actions ordered against nineteen, and if it appears to the members of this Convention that they cannot authorize law-abiding citizens to lease half an acre of land for a camp site, how in the wide, wide world, in conscience, can we legitimatize and authorize the occupation by people who by force for years had been occupying our land against the will of the State, in violation of

the Constitution? If their rentals were paid for the just occupation it would amount to hundreds of thousands of dollars, which they have had the benefit of. And then this is at the rate of ten acres apiece — a thing that no man ever dared to suggest for a camp site for you or me or other people. There is no earthly justification for it, and the only suggestion I have ever heard that is legitimate is to have it fixed so that the commission may not be obliged to do its duty. I hope it will be stricken out.

Mr. Austin — I want to say a word or two about this section. I desire to assure the members of the Committee that it commits no crime. This matter was brought to the attention of the Conservation Committee, not by any member of this Convention, although a number of us were familiar with the situation, but by the Conservation Department after we had practically completed our work upon the article. You will note that it relates back — permission is given to grant licenses to occupants in December, 1909, and while it covers other sections of territory, and I shall take but a moment in explaining this, the particular territory which it is hoped to cover is that surrounding Raquette Lake. I do not know how many of you have ever been there, but I know that at Raquette Lake there is quite a village. There are quite a number of people living there the year around, as well as a great many summer residents, and the greater portion of the shores of Raquette Lake is owned by the State. I believe there are about 150, — at least that is about the number — homes and cottages — and the schoolhouse, by the way, and the church at Raquette Lake — which are on State land. Some of the people have lived in these places for sixty years, some of them less than that, many of them more than twenty years. No one knows better than Commissioner Whipple that the State's title to the land upon Raquette Lake was perfected only in 1909. You must remember that years ago there was practically no ownership of land, in the way we understand it in the city, in the Adirondacks. Men went into the Adirondacks, selected a place, built their homes, and nobody paid any attention to them at all, and they and their descendants have lived there ever since; that is, some of the cases — not all. There is at Raquette Lake, on State land, as an instance, the Blythewood Hotel, — some of you may have stopped there, owned by a man named Bryere. I think it is nearly thirty years — I know it is over twenty — that he has been upon that land, under a claim of title. There are at least two cases of title to lands around Raquette Lake, — the Inman and the La Dew titles — which have been carried to the Court of Appeals — the attempt of the State to eject these people from the land has been carried to the Court of Appeals and the State has been beaten in both of those cases,

reversing the judgment of the lower courts. What the final outcome will be, I do not know. I think, from my knowledge of the subject, that the State now has a good title to the land around Raquette Lake, but I wish to say that it is not an absolutely sure thing. Now what this amendment does is to permit the Conservation Department, in its discretion, in these cases where a great injustice would be worked, where a thriving village of 150 or more homes would be simply wiped off the map and the people forced to go somewhere else to live — it authorizes the Conservation Commission, in its discretion, in proper cases, to say to these people who have been here, thirty, forty, fifty or sixty years, or any time before the State perfected its title, "If there is equity in your particular case, if an injustice would be done by throwing you off, body, boots and breeches, we can issue you a permit to stay." Now that is all that this section does and I say that it commits no crime in so doing.

Now I hope that this amendment will prevail, or the section as reported by the Committee. I have here a list furnished me by the Conservation Commission of the only people, taking the date into consideration, who could be affected by this amendment. I assume it is correct because it comes to me over the signature of the Deputy Attorney-General assigned to the Conservation Commission. He says that, with the people, who have already been removed from State lands, the people who would not be affected by this amendment because they came in after the date mentioned — he says that only 229 occupancies would be affected by this amendment, and I say I assume that it is correct because it is official. I do not think that this Convention ought to take the chance which would come from throwing some of these people off State lands. Most of you know that the Adirondack man is peculiar, the Adirondack native, and I tell you gentlemen that there is very serious danger of a lawless outbreak, resulting in great fires in the Adirondacks, if you drove some of these men out of the homes which they have occupied for forty, fifty or sixty years, where they were born and brought up, and where their children have been raised. Now I do not wish to recognize wrongdoing, but I say, under the peculiar circumstances here, the State is big enough to allow this Commission to exercise its discretion in the matter. Now I will be very glad to answer any questions.

Mr. Griffin — Mr. Chairman, I desire to ask the gentleman, who has seemed to speak with considerable knowledge of the subject, several questions which I think will throw some light upon this proposition, section Number 6. First, under what license, authority or tenure are these occupants or residents now holding their reservations?

Mr. Austin — Most of them, simply by the title which is gained by long-continued occupancy; some of them, under an actual claim of title, under an instrument of some kind.

Mr. Griffin — Second, what happened on December 1, 1909, that we should fix that as the date which will form the basis for the continuance of this occupation?

Mr. Austin — Because up to that time the title of the State to the lands around Raquette Lake was in some doubt, it being based entirely upon tax sales; and upon that date the State, by the payment of \$35,000, purchased the underlying title to this property and felt that it then became secure in the title.

Mr. Griffin — Is the State now obtaining any revenue from these landholders?

Mr. Austin — Absolutely none.

Mr. Griffin — And is it proposed in this section that the State shall derive any income from the renting of the lands?

Mr. Austin — I think it says "upon just compensation."

Mr. Griffin — How many of such claim-holders are there in the Adirondack region?

Mr. Austin — I thought I had already covered that. It has been my understanding, and it was my understanding when I was commissioner, which was five years ago, that there were five or six hundred separate occupancies of such lands. I am informed by the Conservation Commission, and they give me a list which so states, that the number which would be affected by this amendment would be 229.

Mr. Griffin — All told?

Mr. Austin — All told.

Mr. Griffin — And are those claim-holders all holding in the neighborhood of Raquette Lake?

Mr. Austin — No, sir, the majority are around Raquette Lake, but there are some in other sections of the Adirondacks. I might instance one that comes to my attention right here: The Morgan-Lewis patent, Lot No. 2, John Mansen; home, 1 acre, occupied 60 years. The same location, Mrs. Ida Clifford; home, 1 acre, occupied 60 years. I do not want to conceal anything. I want to say that some of these occupancies, a few of them around Raquette Lake, are the homes of wealthy people. Several of them — I guess a half dozen or more — are very palatial camps. If there is anything to rail about in that, the Convention should know it.

Mr. Parsons — I wish to ask whether these persons have been paying taxes on the lands occupied by them?

Mr. Austin — That I could not tell you, Mr. Parsons.

Mr. Wickersham — Does this 229 include the 135 that I understood Commissioner Whipple to say had filed with the Conservation Department an acknowledgment of no title against the State?

Mr. Austin — It does. I want to say, that those disclaimers of title, most of which are not entitled to record, are papers obtained by Commissioner Whipple through protectors — I don't know that they were protectors but they are employees of the department — from people, simply reciting that they disclaim any title to the land upon which their homes are built. I know from the documents in the office that Commissioner Whipple's instructions to the people who were to secure these disclaimers of title were that they should make no representation whatever that the State would permit the interested parties to stay, but I have been told myself, by three or four of the people who signed these disclaimers, that the agents of the departments who obtained them from them said, "Why if you sign this paper, there will not be any trouble about your staying here for some time to come." I, personally, do not place a great deal of weight or consideration in these disclaimers of title. I have no personal interest in this matter, gentlemen of the Convention. No friends of mine are living on State lands, so far as I know. I simply am presenting this at the request of the Conservation Department which is deeply interested in the matter, and that is the only interest in the world that I have in it. I promised that I would state their side of the question to the best of my ability and I have done so.

Mr. Angell — I differ a little bit from Mr. Austin, in that I find that I have a friend upon State land. I am in receipt this morning of a letter from Mr. James A. Holden, who is now the State Historian of the State of New York and who is doubtless well known to many of the delegates. He writes me a long letter, which I will not take the time to read, as to conditions in Lake George where he occupies an island, Phantom Island in the Narrows, which he has occupied for fifteen years, and his predecessors in title, or such title as he has, have occupied it for fifty or sixty years. It is a delightful little camp and he is there taking care of that property and of the State's property in that vicinity. He, in behalf of other residents of Lake George similarly situated, has written me this morning to know if, by action of this Constitutional Convention, they are to be deprived of the right which they have had to the occupancy of these lands for the last fifty years.

Mr. Holden states in his letter, a few brief paragraphs of which I wish to read, as follows:

"Lake George, owing to its occupancy by local people as well as by city people, should be treated and managed differently than the Adirondacks. It is, and always has been, a lake where the camps are generally permanent, and where families come for the whole Summer. * * * There are about eight buildings in

the Narrows used as camps, none of them elaborate, all of them erected there thirty or forty years ago, put up under leases when such things were permitted under the old and better constitutional regulation before the one you are now amending. About five years ago each cottage owner signed a paper or a waiver of some sort, at the request of the late William M. Burnett, Game Warden." That is the kind of paper to which reference has been made by Mr. Austin, which was obtained from all occupants of State lands during the administration of Commissioner Whipple, who has now moved to strike this proposed amendment from the Constitution. Mr. Holden continues: "At that time Mr. Burnett told each person that it was a mere form and that he had the assurance of the then Commissioner that the cottages would never be disturbed, although no new ones could be built."

He continues that to compel the removal of these cottages would merely leave unsightly heaps where they now are and the sites would be occupied off and on by a lot of boys who came there to camp, perhaps from some other State. And he asks, very justly, it seems to me, if the citizens of this State, the taxpayers who occupy these cottages are to be driven off from them after such representations as have been made to them, and the promises that they have had from the Commission, through the Commission's agents, whether they were authorized by the Commission or not.

I think that Mr. Holden and those situated like him would come within the provisions of the proposed article VI. This is the way the section now reads:

"The Conservation Department, upon payment of just compensation, may issue to any occupant of and continuous resident upon State lands within the forest preserve, a license," etc.

Now, I would like to know, not only for the purposes of this Committee of the Whole but also for guidance of courts in the future, if this question shall arise, as it may very likely arise, what is the opinion of the great constitutional lawyers of the Convention, who have drawn this provision, with no interest in the matter, with no interest in the Adirondacks — what, in their opinion, is the meaning of this provision, as they have prepared it? Would a person who has occupied such a piece of land, an island in Lake George, under such conditions as I have described, who has occupied it two or three months during the Summer, for many years, who has built a permanent camp there, who has left his belongings there during all that time, furniture and other household necessities — would a person occupying it under those circumstances and doing that, be said to be "any occupant of and continuous resident upon State lands." If he and those situated

like him are protected by this situation, if they are continuous residents or occupants of State lands, I am content to let this amendment stand as it is. Otherwise it seems to me that it should be broadened in its scope so that it will protect people situated as I have described.

Mr. Wickersham — I should like to make an observation or two on this section. I sincerely hope the motion to strike out will prevail. It seems to me, Mr. Chairman, that this provision goes far beyond the conditions described by Delegate Austin, and it seems to me, Mr. Chairman, that it is framed on a wrong theory. It is not, in its framework, drafted to meet questions arising out of disputed titles to lands. It is not even limited to the part of the Adirondack preserves referred to by Delegate Austin. But it provides that wherever in the entire forest preserve any person shall have been in possession of a piece of land belonging to the State on the first day of December, 1909, if he fit the description here of a continuous resident and occupant of that land, and has put a log house on it, he can get a permit or license to occupy ten acres. He is not even limited to a lot, but he can get from the State a permit to occupy ten acres of land. At Raquette Lake alone, according to the figures furnished here, 2,290 acres of State land may be parceled out under licenses to people who have occupied it in defiance of the mandate, the express mandate of the Constitution of the State of New York, if they were there for precisely the period from December 1, 1909, down to the present time. Now, Mr. Chairman, it seems to me that that goes very far beyond a recognition of the equities alluded to by Delegate Austin in his remarks; and that, if we need to enforce the broad provisions for the protection of the forest preserve which have been adopted in the previous sections of this measure, we cannot expect very much encouragement from the people of the State if we couple those provisions with a recompense for successful trespass on State lands in the past. For that reason I oppose the provision as it is here. It may well be that there are some cases where there are people who have equities which ought to be recognized, and appropriate provisions may well be prepared to meet those cases. This goes far beyond any such consideration.

Mr. Austin — I desire to disabuse the mind of the delegate from New York of two things; first, that I am the framer of this amendment, because I am not, and second, I want to disabuse his mind of the idea that this authorizes the leasing of a ten-acre lot to these people unless their actual occupancy has hitherto been to such an extent. If they have only had half an acre —

Mr. Wickersham — I do not think that is the natural construction of the language.

Mr. Austin — It seems to me that the continuance of such occupancy means that they can take no more occupancy than actually existed.

Mr. Wickersham — Mr. Chairman, if the delegate will yield, one of the most difficult things in the world, as we all know, as lawyers, is to define the precise extent of the occupation of land for the purpose of determining title by adverse possession. With this ten-acre limit, I think there would be very few people who could not establish a sufficient occupancy to reach ten acres.

Mr. Angell — Will the delegate say whether, in his opinion, the language as proposed, which is “may issue to any occupant of and continuous resident upon State lands”— includes an occupant upon an island in Lake George who has continuously occupied it during the last fifteen years for from two to three months in the summer, leaving his possessions in the place which he has built upon the island during the remainder of the year?

Mr. Austin — I will answer the delegate by saying that I do not know. I just wish to say this and then I am through. I desire to make it perfectly clear that this means nothing to me, that the ideas that I have presented are entirely those of the Conservation Department, although I am in sympathy with them, I freely confess. The language is not mine; it is that of the Committee. I do not know who framed it. I was not there when it was framed.

Mr. Wickersham — Is any member of the Committee ready to father this language?

Mr. Marshall — I am ready to answer any question in regard to the language.

Mr. Wickersham — That does not answer my question. I asked whether anybody was ready to father it.

Mr. Marshall — Yes, I will father the language. I am one of the fathers.

Mr. Angell — If Mr. Marshall has the responsibility, will he answer the question I asked Mr. Austin?

Mr. Marshall — I do not claim responsibility further than that I was a member of the Committee which voted in favor of this language by a very large majority, and am therefore ready to explain the intention of the Committee, as I understood it and as I now understand it. The question just asked is whether or not one who occupies, during a part of the year only, an island in Lake George, would come within this provision. My answer is that it was not intended that he should. The language is that “The Conservation Department, upon payment of just compensation, may issue to any occupant of, and continuous resident upon State lands within the forest preserve, a revocable, not-transferable license,

for the continuance of such occupancy to the extent of not exceeding ten acres." It was not believed that men who came only occasionally to a particular place which was occupied should have these rights. The idea was that there should be actual occupancy and continuous residence. It was intended to cover a community, practically, of people who had for many years made a home of the place which was to be made the subject matter of a license. Occupancy of land was not sufficient. That might be only occasional. Continuous residence, actual residence, was the thing to be covered, and that is made clear by the language, that it was to be a license for the continuance of such occupancy and that the lands were to be such as on December 1, 1909, the date of the Benedict conveyance to the State, were and have ever since been actually occupied, as proved by the erection thereon of permanent buildings, so it was intended to circumscribe the situation as much as possible. The real intention and real purpose of the Committee has been described by Mr. Austin. It was considered that there were peculiar reasons which made it absolutely important to recognize a condition — not a theory but a serious condition. It was pointed out that the people who had formed the village around Raquette Lake, and other little communities, were, in the first place, very important to aid in fighting fires. In the Raquette Lake region especially there is one of the most magnificent forests in the Adirondacks, and if these people were driven out there might be wanting the assistance required on occasions of peril to fight the fires. It was also believed that there might be positive elements of danger in driving the people out after they had made their homes in this particular region for many years and had therefore believed, at least, that they had possessed rights. Some of them were there, either under actual permission or under sufferance from the owners of the land whose lands were subsequently being acquired by the State under tax titles. And the title of the State itself was extremely questionable until the first of December, 1909. Now, it is true, as has been pointed out, that this language is not limited to the Raquette Lake region, because it was indicated during the discussion by the delegate, Mr. Whipple, who is more familiar with the conditions in the Adirondacks than any man on the Committee, that there were a few other regions which he specified in which similar conditions existed, and therefore the language is made general. But the date is fixed because of the fact that the great majority of locations occupied were those covered by the Benedict title which became perfected in the State on the first of December, 1909. Now, I state further that this clause was added after the Committee had completed its deliberation, and it was called together in order to meet this situation

which was urgently presented to it by the Conservation Commission, who appeared there by the counsel of the Conservation Department, who was provided with maps and pointed out particular localities indicated. And this language was used advisedly, after conference with various gentlemen of the Committee, in order that we might not have it said that this was an attempt to make rich men who had camps in any part of the Adirondacks, and especially along Raquette Lake, read their titles clear to mansions in the Adirondacks to which they were not entitled. They did not live there continuously during the year, and therefore they were eliminated from the intendment of this provision — the millionaire or the rich men who have been referred to who it was said might come under the language of this provision if there was not used language which was apt to describe the real situation which confronted the Committee, in order that there might not be given to those who could well afford to go elsewhere, from whom there was no peril — eliminate them, but there would be within the beneficial provision of this section, those who for reasons of policy it was desirable to afford some protection; and you will note that the language is not mandatory, it is permissive. The department examined the tracts in each instance before giving a license. It is not giving a lease; it is merely giving a license, and it is a license which is expressly described as a revocable, non-transferable license, those words “revocable” and “non-transferable,” although in the law implied in the term “license” being placed in connection with the word “license” with the very purpose of emphasizing the idea that there is to be no permanent right acquired, and that the right was to be one which could be suspended or terminated at the will of the department.

Mr. J. L. O'Brian — Mr. Chairman, I for one hope that this section 6 will be stricken from this proposed amendment. If the object of this language is as stated by Delegate Marshall, I don't think the language is adequate, because I don't believe that under this language, broad as it is, any discrimination can be made against the rich and in favor of the poor.

Mr. Marshall — If the rich live there continuously during the year, why, then they would come under it, but they don't.

Mr. J. L. O'Brian — What I was about to say was that I have apparently in the law dealt with a different class than Mr. Marshall, and it seems to me that any rich person, if I may use that unfortunate expression, who desires to stay in the Adirondacks, could very readily arrange to have this permit issued in such form, to such person, as will be perfectly sound under this section. But I call your attention to the same section, a provision that was called to your attention by the delegate, Mr. Wickersham. These

permits practically run with the land. These permits are not limited to a number of years. The provision in its phraseology provides that the department may issue to any occupant of continuous residence upon State lands, etc., provided that such lands have been since December, 1909, actually occupied and improved. The construction that I place upon that phraseology, whatever may have been the intention of the framer, is that five years from now, when the present occupant would die, the holder of a permit, the Department might issue a permit to a successor who had happened to live with the same person on the land. So that I think the language of the section is altogether unfortunate and loose, but my objection to this section is based upon, not the defects in phraseology, but what seems to me a matter of fundamental principle. I don't believe that it is fair to the people of the State of New York to place before them this amendment and ask them to vote favorably upon it, and ask them to grant to 229 individuals a special privilege and a special discrimination which has no basis whatever as to most of the 229 other than the right of squatter sovereignty, which is no right at all, and I, for one, hope that the Constitution of the State of New York, the organic law of the State, will not be disfigured by such an unheard of proposition as an attempt to legalize a palpably and confessedly illegal occupation of land, and making a discrimination in behalf of a favored few as against the multitude of the people, none of whom come under this section requiring a similar right, and I hope that this section will be stricken from the Constitution.

Mr. Whipple — I trust, Mr. Chairman, that before we vote upon this question, everybody will really understand what it comprehends: In township Forty, there are 61 of these residents. That is Raquette Lake. Silver Lake, 9 of these residents. Lake George Islands, 17 of these residents. Lower Saranac Lake, 28 of these residents. Campers around the head waters of Saranac and St. Regis River, 13. Beaver River section, 35, and every man on Beaver River is a wealthy man, worth more money than I am, and a great many delegates here, to my personal knowledge. Hotels: Big Otter Lake; Jesup's River; Mason Lake; Tirrel Pond; Round Pond; Thirteenth Lake; they have six residents. Homes, 2. Lewis County, 2. Greene, 1. Ulster County, 5. Moose River section, 11. Properties at end of Carrys, Sweeney Carry, Indian Carry, Forked Lake, 3 of them. Hudson River water sheds, 15 of them,—20 of them. Sacandaga section, 5. Black River section, 7. Schoolhouses, 1. Miscellaneous, Hamilton County, 14. Now, they are scattered all over. No man living knows, the department does not know, how many of these there are, and every one of those are without authority, except about a

half dozen. I have been substantially to all of these places. My judgment is that there is not 10 per cent. but what are doing a good business, owe nothing, and that I cannot say for myself. Take the islands of Lake George. There are one or two cases where men came there under authority of the old commission. Colonel Mann is one, and others came there in the same way, and at Raquette Lake there is one case of a squatter renting his property to a wealthy New Yorker, and he is getting a sum that I hardly dare mention, but it amounts to over a thousand dollars, and yet that is State money. It is going into the hands of the squatter, and there is no justification for it that I can see, and when you say 1909, and fix that as the time, that might mean something just at Raquette Lake, but it does not cover the entire situation. How you can fix the time as 1909 and have it mean anything, I cannot understand. And I want to say something to Delegate Austin. I have never found any fault with Mr. Austin's treatment of me or the department of which I was the head. I have said many kinder things of him than he has of me, but in that report he criticized me for not putting various people out at Raquette Lake, and yet in three months after he wrote and finished that report, he said he changed his mind about it, and now he is asking the State to legalize them in the Constitution. I cannot quite follow that, Mr. Austin.

Mr. Austin — At that time did not you testify before me as Commissioner, that the reason that you did not put the squatters off was because you were afraid they would burn up the forest?

Mr. Whipple — I will answer that, Mr. Chairman.

Mr. Austin — And that is the fear I am expressing now, and that is what led me to my opinion.

Mr. Whipple — I will answer that. I cannot say that I did not say that, because that has always been the fear. I will admit that, but what I did say to you, as Commissioner, and to the public generally was that until we settled the lawsuits against the rich men we did not feel that in decency we ought to put off the poor men, and that had been the contention up until the time we got that underlying title about which Mr. Austin told us, and I thought I did the next best possible and sensible thing when I got the release and the acknowledgment of the State's title, so they could not put up the defense of adverse possession. I want to say to Mr. Angell that I do not think for a single minute that any Commissioner, or any decent representative of the Commissioner, would say to a man that he wanted to get that release, and if you will sign it, you will never hear from it. You don't believe that? That was never done. We said to them, this: "You give us that release or we will commence an action to-morrow, because here is

a committee investigating this department and they are finding fault with us, and this department can no longer wait." As to the other proposition, of course you don't think that I would make that, or through anybody. We never said there is nothing to it. It was a business proposition. But this, Mr. Chairman and gentlemen, seems to me to be the meat of the cocoanut. It has got to be admitted that they occupied this land against the State's interest for a great many years in many cases. In some, that is not so. Now, to legalize them in that, and to put it into your Constitution, why, it seems to me to be impossible as a matter of principle for men to do that, and that to the exclusion of you and me and everybody else. I wish to say that in everything I did, I tried to protect the forests. I never asked for an acre of land for myself, and I do not believe there is any necessity in giving land to anyone, and yet you propose to give them ten acres. Why, this whole thing seems to me to be perfectly ridiculous. So far as I am personally concerned, for the purposes of the record, I wish to state that I am going to vote that way, so I shall not stultify myself.

Mr. Olcott — I feel constrained in just a word to express my entire agreement in the points that Mr. O'Brian and Delegate Whipple have just made, and for that reason I have expressed my agreement so that I will not detain you in repeating those reasons, but I go further and say that I feel that Delegate Marshall has not correctly interpreted the language of this section with regard to what is a "continuous resident." In answer to Mr. Angell's question I should say, without feeling that I am a special authority on the question, but feeling that, I am constrained to say what I do believe in connection with this matter, that a person who has occupied for fifteen years as a summer resort an island on Lake George, or who has a place on Raquette Lake, and leaves his property in the hands of a care-taker, who looks after his property, for a period of years, his property being of great value in need of the care and attention of a watchman, or a care-taker, that he has occupied that place continually as a resident, because I understand that, as distinguished from such questions as the right to vote or the place of paying personal taxes, a man may have, as many of us have, a residence in New York City or elsewhere, and a summer residence somewhere else. Now, Mr. Marshall, in upholding his opinion on this subject, and I want to call his attention to it, and I ask whether he thought the language in the proposition was other than it was, repeatedly stated, appearing to quote this language, "a continuous resident during the year." That is not the language here. If it were, it is quite possible that that might exclude the rich man and the occupants of islands in Lake

George. This says, "The Conservation Department, upon payment of just compensation, may issue to any occupant of and continuous resident upon State lands within the forest preserve a revocable, nontransferable license," etc., and that, it seems to me, includes the matter of the summer resident whose occupancy is continuous, even though he is not there every minute of every day of the year, and I, therefore, do not agree with Mr. Marshall's interpretation.

Mr. Brackett — Speaking from an entirely different point of view, I must say to the Convention that I cannot quite agree with my brother Marshall. It is the first time in my life that I remember that I ever did disagree with him, but I do not believe that his interpretation of the language is correct. Let us see for a single minute what would be the rights of persons occupying State lands. If they were occupying them under a claim of paper title, and they had been there for forty years, either the present occupant, or the predecessor of the title, I suppose there can be no question that this claim, under a paper title, and having remained in possession, but that that title would be good as against the State or anybody else. It would be good as against an individual, and as I recall the words in the section, it would be good against the State after a certain number of years. Occupation which would be required for that purpose does not extend to every minute of every day of all the year. If a person regularly spends a portion of each year at a given spot, and the remainder of the year elsewhere, leaving the minutiae of ownership out, such as furniture mentioned by the delegate from Warren, and if he maintains a watchman there or a care-taker, and occasionally visits it, I suspect that would be sufficient. I am of the opinion that it would constitute a sufficient adverse title, the way the article reads. There is a provision which leaves it with the Conservation Board. I do not suppose that I am possessed of a very accurate prognosticating mind in these days as to what will happen, and yet I do not suppose that there is any conservation board that would grant to a person who was wealthy or of independent means, any paper under this discretion provided by this language. There are said to be 229 persons affected, said to be occupants of the land in question. If that is so, it must comprehend something like a thousand persons.

Mr. Whipple — About seven hundred.

Mr. Brackett — About seven hundred persons, my friend from Cattaraugus says. They are not quite as populous up there as in ordinary places where the average family consists of five and I supposed it would be the other way up in the Adirondacks. But say 700 persons. What is to be done with them, Mr. Chairman? What about those of the 700 who have not independent

means and who are dependent upon the place they occupy to sustain them? What is to be done to avoid actual suffering? Are they to be wiped off the face of the earth? Are you going to send somebody out to chloroform them? What is the proposition? Are they to be drowned in Raquette lake? This is a serious situation for a man who has grown old and who is occupying one of these places and who conceived the original sin of occupying it. It is a very serious situation. Take an old man and his wife and turn them out of their home. Mr. Chairman, the treatment of the Arcadians has not come down in history as really wise or of a very decent nature, and aren't we on a very small scale, if the motion shall prevail in some cases, at least, giving similar treatment to these persons? I will concede that they ought not originally to have occupied it. It has appeared, I am told, before this Committee, that the men who are occupants in certain places were the hired men of some individuals that were living there, and were told to go and build a little shack in the corner and they built and they lived there under these circumstances without any title and without claim to title, and then the owner conveyed to the State. Now, we ought not, even in adopting a Constitution, to forget our humanity. Now, I do not know. It is quite doubtful as to what really is the best thing to do. When in doubt, I suppose the decent and proper thing and the ordinary thing and the right thing is to sustain the Committee and to vote to give this permissive power to the commission, so that if there are cases which contain suffering and hardship that might result from a strict and harsh enforcement of the law, that there could be just a little sympathy displayed during the life of the old man and the old woman, and so let them out without suffering.

Mr. Reeves — There is one expression in this section which might be emphasized and that is that the license that is to be issued to these people is to be a "non-transferable license". Now, as Mr. Marshall has suggested, we have to draw a very clear distinction between occupancy that would ripen into a title by adverse possession and residence, and the three propositions, the three statements that we have in this paragraph are, that they must have been continuous residents, that they shall have occupied, and that they are simply to get a non-transferable license. I doubt that language could be used more appropriate to indicate that we are simply dealing with poor people in the Adirondacks, who ought to be taken care of, when we are making such sweeping provisions as are found in the other sections of this article, and I hope very strongly that this provision will not be stricken out, and that the humanity of this State will be observed in sustaining it.

Mr. Schurman — I should like to ask whether in case this section is stricken out, it will not be possible for a future Conservation Commission to care for these people, to tolerate them, as they have been cared for and tolerated by the existing Conservation Department?

Mr. Reeves — It would seem to me, Dr. Schurman, in answer to your question, while it might be possible in a way for this future commission to do that, it would be continuing to commit what has been going on for a number of years, practically an illegal act. I think that while we are doing it, and if it is right to do it, that it should be expressed in our Constitution, so that we will be doing a legal act in taking care of these people.

The Chairman — Is the Convention ready for the question? The Chair rules that so much of the delegate's question as relates to Section 7 is not in order. The question arises upon the simple proposition of whether or not Section 6 shall be stricken out. Those in favor of striking out signify by saying Aye, contrary-minded No. The Chair is in doubt.

The Chairman — Those in favor of striking out Section 6 will please rise. Those voting No will please rise.

The motion is lost.

The question now arises upon the approval of question 6.

Mr. Marshall — In order that Section 6 may be uniform in phraseology, I move to strike from line 13 of Section 6 the word "conservation." Section 1 speaks of it as "the department of conservation," and this would be calling it "the Conservation Department," and in Section 2 we have referred to it as the "Department," so that I think it would be better to strike out the word "conservation" and have it read "the department." I move that amendment, Mr. Chairman.

The Chairman — The question is on the amendment offered by Mr. Marshall. All in favor signify by saying Aye, contrary No. The motion is carried.

Mr. Austin — I rise to a question of personal privilege.

The Chairman — The gentleman from Greene rises to a question of personal privilege. The gentleman will state his question of personal privilege.

Mr. Austin — I wish to make a correction of the statement made by Delegate Whipple. I thought it was incorrect at the time he made it, but since then I have verified it by an examination of the report which I made in 1909 and 1910, and I find that the report contains no criticism whatever of Commissioner Whipple for allowing squatters to remain on State land and contains only a statement of the number of occupants.

Mr. Whipple — I have no doubt that Mr. Austin is right in what he says as to the contents of his report, but I had the impression that it was in his report. If it wasn't there it was somewhere else.

Mr. Marshall — I think we questioned you rather severely about it.

The Chairman — The Chair calls the attention of the Convention to the fact that there are only five minutes left for debate. Are there any further motions?

Mr. Marshall — Mr. Chairman, I move the adoption of this Section.

Mr. Olcott — I move to amend Section 6 by adding the words "throughout each year" after the word "resident" on the 14th line.

Mr. Marshall — I accept that so far as I represent the Committee.

Mr. Olcott — If that is accepted and adopted, I withdraw any opposition to the Section.

Mr. Marshall — That amendment is on line 14, at the end of line 14, page 4.

Mr. Olcott — Yes, sir.

Mr. Wickersham — I move to amend by inserting on line 19, after the words "actually occupied" the words "by such occupant."

Mr. Blauvelt — Mr. Chairman, I rise to a point of order.

The Chairman — The delegate from Rockland, Mr. Blauvelt, will please state his point of order.

Mr. Blauvelt — I understand that paragraph 6 has been adopted.

The Chairman — No, sir, it has not been adopted. The motion to strike out the section was lost. The Section 6 has not been approved.

Mr. Griffin — I have followed this discussion closely, and I though there was considerable in the objection raised by Delegate Wickersham from New York, and in order to make the language clear that a lease or license may not be given to a larger claim than the occupant holds I suggest and offer the following amendment: On line 17, strike out the words "extent of" and insert the following words: "Land so occupied up to and," making the section read "The department, upon payment of just compensation, may issue to any occupant of and continuous resident throughout the year," as the other amendment provides "upon State lands within the forest preserve a revocable, non-transferable license for the continuance of such occupancy to the land so occupied up to and not exceeding ten acres," and so forth.

Mr. Marshall — No, I will not accept that. I am willing to accept the amendment of Mr. Wickersham, as well as that of Mr. Olcott.

The Chairman — First question arises upon the Proposed Amendment offered by the gentleman from New York, Mr. Olcott, on line 14, after the word "resident", insert the words "throughout each year." Those in favor of the amendment signify by saying Aye, contrary No. The amendment is adopted. The question arises upon the amendment offered by the gentleman from New York, Mr. Wickersham, that the section be amended in line 19 by inserting after the word "occupied" the words "by such occupant." All in favor of the motion say Aye, contrary-minded No. The motion is adopted. The question now arises upon the Proposed Amendment of the delegate from the Bronx, Mr. Griffin, which the Secretary will read.

The Secretary — Page 4, line 17, strike out the words "extent of" and insert in place thereof the following: "the land so occupied up to and".

The Chairman — Those in favor of the motion will say Aye, contrary-minded No. The motion is lost. The question now arises upon the approval of the section as a whole, as amended. Those in favor will signify by saying Aye, contrary-minded No. The section seems to be approved and is approved.

Mr. Marshall — I now move the adoption of Section 7, the only change being that the word "section" is stricken out, and the word "article" is substituted, and which is now a part of Section 7, Article VII, and was inserted at the time of the amendment, and this provides that "A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the Supreme Court in Appellate Division on notice to the Attorney-General, at the suit of any citizen."

The Chairman — The question is upon the approval of Section 7. Those in favor signify by saying Aye, contrary-minded No. The motion is carried.

Mr. Marshall — I desire to move a reconsideration for the purpose of making a single amendment to Section 1, which was adopted the other evening. I move to strike out, in view of some criticism which had been made of an amendment which has been offered to line 11, page 2 — I move to strike out the word "control" and also lines 24, 25 and 26, which read: "Nothing herein contained shall deprive the canal authorities of the control of the waters of the canals, or of the canal feeders, or in any wise limit or interfere with such control." The fear expressed by Mr. Clinton was that the use of the word "control" in line 11 of page 2 might interfere with the canals. There was no such intention and, in order to avoid any possible question with regard

to the subject and to leave the powers of the commission, or to limit them to "conservation, prevention of pollution and regulation of the waters of the State", I move that the word "control" be stricken out and the accompanying amendment which was adopted contained in lines 24, 25 and 26 likewise be stricken out.

Mr. Clinton — The question arises on the motion to reconsider, I take it, and I hope I may be excused for saying that with the amendment suggested by Mr. Marshall to strike out the word "control" there is no necessity for the amendment which I introduced and which was adopted, and more than that I wish to state that without that amendment in, without the word "control" out, questions as to construction would arise, which ought not to arise, and it would be obviated if his amendment is adopted and my amendment is stricken out.

The Chairman — The question arises upon the motion to reconsider the vote by which Section 1 was approved for the single purpose of striking the word "control" in line 11, and the words contained in lines 24, 25 and 26. All in favor of the motion will say Aye, contrary-minded No. The motion is carried.

Mr. Marshall — I now move the amendment suggested, to Section 2, that the word "control" be stricken out on line 11 and that all of lines 24, 25 and 26 be stricken out.

The Chairman — Are you ready for the question on the amendment offered by Mr. Marshall? All in favor of the motion signify by saying Aye, contrary-minded No. The motion is carried.

Mr. Marshall — I move the adoption of the article as it has been amended and which involves the repeal of the present Section 7 of Article VII, and its amendment by inserting the word "article" as it has been adopted and amended here.

The Chairman — Is the Convention ready for the question? All those in favor of the motion will signify by saying Aye,—

Mr. Meigs — I would like to move the reconsideration of the vote by which Mr. Blauvelt's amendment was passed for the following purpose. The road which has been assured by the acceptance of this amendment is to go from Fulton Chain to Long Lake. It should not stop at Long Lake, which is a comparatively small place, but should be continued to Saranac Lake. Such a continuation would mean the crossing of but a very few acres of State land. Let us make this complete. This omission of this length of road has been brought to my attention only comparatively recently, and I would like to have the Convention grant permission to the Highway Commissioner or to the proper authority, whoever that is, to carry this road through to its logical end,—Saranac Lake village.

The Chairman — Gentlemen, you have heard the motion, which is a motion to reconsider Section 2, for the purpose stated. Those in favor of reconsidering will vote Aye.

The Chairman — No debate is in order at this time.

Mr. Blauvelt — I ask to make a statement. The construction of a road from Long Lake to Saranac was considered by me and I conferred with the Highway Department and I also conferred with Mr. Whipple, who is more or less familiar with the situation, and I have before me a highway map of Franklin and Hamilton counties, and I understood that it was possible for the Highway Department, over an existing road, to construct a road from Saranac to Long Lake. Mr. Meigs has called my attention to the fact that there is a section intervening that will have to be constructed over State land. Personally I know nothing about it. I am satisfied, however, if the road is extended from Long Lake to Saranac Lake, but I did not include that for the reason that I understood that there was an existing highway which might be improved. Otherwise, I would have included that road in the Proposed Amendment which I made. At this time I am perfectly willing to have the section amended by including it. May I ask the Chair if this section may, upon an inquiry and investigation, be amended on third reading?

The Chairman — The Chair understands that a motion is in order on third reading to recommit to the Committee of the Whole for the purpose of amendment and report forthwith to the order of third reading. If the Chair is in error perhaps some other parliamentarian who is better informed will correct him.

Mr. Blauvelt — There should be a road, Mr. Chairman, from Long Lake to Saranac Lake.

The Chairman — The question rises upon the motion of Mr. Meigs to reconsider the vote by which Section 2 was approved in respect to this single proposition of a road. Those in favor will signify by saying Aye, contrary-minded No. The Chair is in doubt and those in favor will say Aye, contrary-minded No. The motion is carried. The proposed amendment will be sent to the Secretary's desk. The Clerk will read the Proposed Amendment.

The Secretary — Page 3, line 5; nothing herein contained shall prevent the State from constructing a State highway from Saranac Lake, Franklin county, to Long Lake in Hamilton county, and Old Forge in Herkimer county, by way of Blue Mountain Lake and Raquette Lake.

The Chairman — You have heard the amendment read?

Mr. Blauvelt — Mr. Chairman, will the Clerk please read that again? I don't quite like the language of it.

The Chairman — The Secretary will read the new language inserted.

The Secretary — Insert after the word "from" the words "Saranac Lake, Franklin county, to Long Lake in Hamilton county, and Old Forge in Herkimer county, by way of Blue Mountain Lake and Raquette Lake."

Mr. Blauvelt — Mr. Chairman, I have not written this out, but will you permit this suggestion in the form of an amendment to the amendment: "Nothing herein contained shall prevent the state from constructing a state highway from Saranac Lake in Franklin county through Hamilton county, by way of Long Lake, Blue Mountain Lake and Raquette Lake to Old Forge in Herkimer county.

Mr. Meigs — Mr. Chairman, I will accept that amendment.

Mr. Marshall — I think that is a very complicated statement.

Mr. Meigs — I think that is just the statement necessary.

Mr. Marshall — Mr. Chairman, I think it would be better covered by the following language: "Nothing herein contained shall prevent the State from constructing a State highway from Saranac Lake in Franklin county to Long Lake in Hamilton county and thence to Old Forge in Herkimer county by way of Blue Mountain Lake and Raquette Lake." That is more definite. Instead of being so general and covering a number of counties, I want to describe the route.

Mr. Meigs — Mr. Chairman, Senator Blauvelt's words describe just what we need in the way of an amendment.

Mr. Marshall — It is too general.

Mr. Blauvelt — Mr. Chairman, if you will permit me, I will read my Proposed Amendment. Mr. Marshall, will you kindly follow me: "Nothing herein contained shall prevent the state from constructing a state highway from Saranac Lake in Franklin county, through Hamilton county, by way of Long Lake, Blue Mountain Lake and Raquette Lake, to Old Forge in Herkimer county."

Mr. Marshall — Mr. Chairman, I object to that language because that "through Hamilton county" may mean a great many by-ways as highways, and I think we ought to have something definite.

Mr. Blauvelt — Mr. Chairman, this is through Hamilton county, by way of Long Lake, which is to be over an existing road, and by way of Long Lake, Blue Mountain Lake, and Raquette Lake, from the Franklin county line, or from Long Lake, at least, and by way of Blue Mountain Lake, which will follow an existing road, which may have to be widened in places, and a few trees cut and the road straightened.

Mr. Rhees — Mr. Chairman, It seems to me that this Convention should not attempt to define a road to be constructed from Saranac Lake to Old Forge. Why need we do anything more than to authorize the Highway Commission to build a road from Saranac Lake to Old Forge, leaving to that department the selection of the route which will best serve the people of the State?

Mr. Blauvelt — Mr. Chairman, the purpose of this amendment is to vest the power in the Highway Commission. The power to construct this road does not happen to belong to the Conservation Commission.

Mr. Rhees — Then why should the Conservation Commission article attempt to determine the route?

Mr. Meigs — Mr. Chairman, I move the adoption of Mr. Blauvelt's amendment.

Mr. Blauvelt — Mr. Chairman, if it will remove the objection of Mr. Marshall, I have no objection to his proposed language, because it takes it from point to point the same as mine.

The Chairman — The delegate from New York, Mr. Marshall, will please hand his amendment to the Secretary.

Mr. Marshall — It will read as follows: "Nothing herein contained shall prevent the State from constructing a State highway from Saranac Lake in Franklin county to Long Lake in Hamilton county to Old Forge in Herkimer county and thence by way of Blue Mountain Lake and Raquette Lake."

The Chairman — Those in favor of the amendment will signify by saying Aye, those opposed No. It is carried.

Mr. Marshall — Mr. Chairman, I now move my motion to adopt the entire article as amended,—the entire section as amended.

The Chairman — The question first arises on agreeing to the section as amended. Those in favor will signify by saying Aye, opposed No. The section is agreed to. The question now arises on the original motion of Mr. Dow from the Committee on Conservation, that the amendment should go to third reading. Those in favor will signify by saying Aye, opposed no. It is agreed to.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise.

The Chairman — The motion is that the Committee do now rise. Those in favor will signify by saying Aye, those opposed No. It is carried. (President Root resumes the chair.)

The President — The Convention will come to order.

Mr. J. G. Saxe — Mr. President, on behalf of the Committee of the Whole, I offer the following report:

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment Number 787, reports in favor of the adoption of the same with the following amendments.

The President — Is the Convention ready for the question on agreeing to the report of the Committee of the Whole? All in favor of agreeing with the report will say Aye, contrary No. The report is agreed to and the amendment is sent to third reading.

What is the further pleasure of the Convention?

Mr. Wickersham — Mr. President, I move that the Convention do now take a recess until 8:30 this evening.

The President — It is moved that the Convention do now take a recess until 8:30 o'clock this evening. Those in favor of the motion will signify by saying Aye, those opposed No. The motion is carried, and the Convention stands in recess until 8:30 o'clock this evening. Whereupon at 6:15 p. m. the Convention took a recess to 8:30 p. m. of the same day.

AFTER RECESS—8:30 p. m.

The President — The Convention will come to order.

Mr. Wickersham — Mr. President, I ask unanimous consent to take up to-night, in addition to the Special Orders which have been set for to-day, No. 48, in General Orders, Print No. 780, which was set as a special order for Wednesday. We have business taking only a very short time set for this evening, other than the finance article which the Chairman of the Finance Committee prefers not to take up until to-morrow, and as Senator Saxe is ready with his proposed amendment I ask unanimous consent to have that taken up after those set for to-day.

The President — Is there objection? The Chair hears none, and, by unanimous consent, General Order No. 48, Print 780, will be taken up after consideration of the four special orders set for this evening.

Mr. Leggett — Mr. President, I ask unanimous consent to submit a minority report to No. 417, on which I understand a favorable report by the majority was filed this afternoon, so that it may go into print with the majority report.

The President — Is there objection? The Chair hears none and the minority report will be submitted and printed under the rules.

Mr. Ostrander — I ask unanimous consent to present a memorial from Spanish War Veterans residing in the Thirtieth Senatorial District.

The President — Is there objection to receiving the memorial? The Chair hears none, and the memorial is referred to the Committee on Civil Service.

The Convention will go into Committee of the Whole for the consideration of Special Orders, and General Order No. 48, at the conclusion. Will Mr. Louis Martin take the chair?

(Mr. L. M. Martin takes the chair.)

The Chairman — The Convention is now in Committee of the Whole for the consideration of the calendar. The matter under consideration now is General Order No. 30.

Mr. Latson — Mr. Chairman, this bill is designed to correct something of an irregular or incongruous situation that exists in the Constitution of the State of New York, regarding the Military Law of the State and the Acts of Congress. The National Guard of the State of New York is to-day organized, equipped, disciplined and administered under the Military Law of the State, and it might be somewhat difficult to harmonize the provisions of that law with the technical provisions of our Constitution. You will observe that by the Proposed Amendment the words "the chiefs of the several staff departments" are omitted from the present Constitution, and it may be of some interest to the Convention, Mr. Chairman, to look back for a moment to see just what those words mean and what is intended by the term "chiefs of staff departments." The Constitution of 1894 followed in this regard the provisions of the Constitution of 1846. Those words were in the former Constitution, and they were retained in the present Constitution. But under the Constitution of 1846 a somewhat different condition of affairs prevailed as compared with the Constitution of 1894. Our present Constitution contains, I think, the first reference in any Constitution of this State of a classification of our militia. And you will observe that here the Legislature is empowered to classify the militia into the active and reserve. But under the prior Constitution of 1846 no such classification was in contemplation, and that Constitution contained a mandatory provision to the effect that the entire militia of this State, that is, all able-bodied men of military age, should be always armed, equipped and disciplined. The provision of the present Constitution makes it mandatory only that the active militia shall be equipped and disciplined. It, therefore, comes about that this reference to chiefs of staff departments was introduced in the former Constitution, when they had in contemplation the entire militia as opposed to the active militia, and as a result there sprang up in this State a great many divisions, and under those divisions a great many brigades. In fact, the State was divided into certain division districts, each under the command of a major-general, and each of those division districts was subdivided into brigade districts, each of which was under the command of the brigadier-general, and each brigade district was in turn sub-divided into regimental districts, each of which was in command of the colonel, and each regimental district, in turn, was sub-divided into company districts, each of which was in command of a captain. The result was that at one time we had in this State as many as forty-four divisions, and something over eighty-two or eighty-three brigades, and at that time with all of those divisions there were not in the active service as many enlisted men as there are to-day, and I may say that there are not

to-day in the National Guard of this State quite enough to make an entire division under the regulations of the Regular Army of the United States.

Well, the result was that as the plan was laid out under the former Constitution, the Governor was empowered to appoint those various chiefs to the staff departments. There were something like ten of them in addition to the Adjutant-General, and I will read for a moment the title of those several chiefs: The Adjutant-General, with the rank of Major-General; one Inspector-General who shall be Chief of Ordnance; Judge-Advocate-General; Surgeon-General; Chief of Engineers; Quarter-Master; General Paymaster; General Commissary; General of Subsistence; General Inspector of Rifle Practice. Now each of these had the rank of Brigadier-General, and they were appointed by the Governor at pleasure, and appointed, mark you, from civilian life at the pleasure of the Governor. They held office for the term of the Governor so that each incoming Governor made from civilian life at his pleasure ten or eleven new Brigadier-Generals. Thus two evils sprung up, one that men from civilian life, without any experience or training whatever in military matters, were given the title of Brigadier-General, and in addition to that the National Guard every two years passed into the hands of a new administration in all of its departments and in every function, and the result was that very ludicrous situations sometimes occurred. We have a record in the Adjutant-General's office of an inspection where the Major-General attended with his staff, many of whom were appointed from civilian life by the Brigadier-General; the Brigadier-General attended with his staff, many of whom were appointed from civilian life; the Colonel attended with his staff, and the entire division appeared for inspection with less than a full company — something less than a hundred men. The attempt on the part of the successive Adjutants-General to correct this evil was more or less unsuccessful and while they devoted themselves to that task, the evil to which I have alluded still continued until the present Military Law was passed in 1898. That Military Law constructed or reorganized the National Guard into a single division, and under that division created four brigades. There was a technical recognition of the chief of the staff departments and in a certain section of the Military Law these were provided for, but when the duties of the Adjutant-General were prescribed you will note that the Adjutant-General was called upon to perform all the duties of these several chiefs of staff departments, the result being that the Adjutant-General in himself was the chief of each department, which led to some very peculiar correspondence and we have upon the records of the Adjutant-General's office to-day correspondence passing between Adjutant

Nelson H. Henry to the Surgeon-General Nelson H. Henry, and an appropriate endorsement by Nelson H. Henry as Surgeon-General addressed to Nelson H. Henry as Adjutant-General, and a further endorsement of Nelson H. Henry as Adjutant-General to the Surgeon-General Nelson H. Henry — and thus the form prescribed by the Constitution was preserved while in substance the Military Law was the basis of the organization of the militia. In the meantime, Congress enacted certain laws. What is known as the Dick bill, passed in 1903, provided that within five years from the date of that enactment the militia of the several states should be made to conform to the plan of organization adopted by the Regular Army of the United States. Later that law was amended so that in 1908 the Act of Congress provided that "On and after January twenty-one, nineteen hundred and ten, the organization, armament and discipline of the organized militia in the several states and territories and the District of Columbia shall be the same as that which now or hereafter may be prescribed for the Regular Army of the United States save in time of peace or of such general exceptions as may be authorized by the Secretary of War." But the State of New York had, as a matter of fact, anticipated precisely that command, and by the enactment of the Military Law, coming as closely as possible to an inconsistency with our own Constitution, it had anticipated the Act of Congress, so that to-day the National Guard of the State of New York organized under the Military Law is organized in exact conformity with the Acts of Congress even though there is every reason to conclude that that organization is not in strict accordance with the Constitution of the State.

Mr. M. Saxe — I wish to inquire whether the Act of Congress to which you referred is the so-called Dick law?

Mr. Latson — It was the Dick law. So that the purpose of this amendment is to bring the Constitution of the State of New York in harmony with the Act of our Legislature in the Military Law, and also in harmony with the Act of Congress known as the Dick bill. I may say that the Proposed Amendment was originally conceived by a committee of the National Guard known as the Committee on Legislation; and the Committee on Militia and Military Affairs has been attended by the Adjutant-General of the State together with a number of officers of the National Guard, all of whom join in a recommendation that favorable consideration be given to this change in our constitutional provision. Therefore, Mr. Chairman, I move you that this proposed bill be reported to the Convention, to be advanced for a third reading.

The Chairman — The question is on the motion of Mr. Latson that bill No. 30, in General Orders, be reported by the Committee

of the Whole favorably to the Convention. If there is no objection, those in favor of the report will make it manifest by saying Aye, opposed No. The bill is reported favorably to the Convention by the Committee of the Whole. The Chair understands that the next order is General Order No. 31. The Chair recognizes Mr. Latson.

Mr. Latson — Mr. Chairman, this bill is closely interwoven with the one concerning which I have just spoken and there may be room for the contention that in view of the fact that we have introduced in the bill with reference to which I have just spoken the provisions that the Legislature shall have power to prescribe the qualifications of Major-Generals and Aides-de-Camp — that the Legislature might be deemed not to have such power with reference to commissioned officers. The amendment embodied in General Order No. 31 is for the purpose of setting at rest any contention in that regard by the mere insertion of the words “and with such qualifications.” I may say in this connection that the Military Law of the State prescribes qualifications now for Major-Generals and for all commissioned officers, and that the Governor of the State in making his appointments has, ever since the enactment of that law, recognized these qualifications. There has never been any doubt that the qualifications prescribed by the Legislature in this regard were reasonable, the only doubt being whether such a law were strictly constitutional and in conformity with the provisions of the subdivisions which we now seek to amend. I therefore move, Mr. Chairman, that this measure be recommended to the Convention, to be advanced for a third reading.

The Chairman — The question arises on the motion of Mr. Latson that bill No. 31, in General Orders, now before the Committee of the Whole, be reported by the Committee of the Whole to the Convention favorably. Those in favor of the motion by Mr. Latson will make it manifest by saying Aye, opposed No. The bill is so reported. The next order is General Order No. 33, on the calendar.

Mr. Latson — Mr. Chairman, you will observe that this bill changes the word “six” to “three”; that is, that while the present Constitution provides that absence of an officer for more than six months may be ground for his dismissal, the proposed amendment changes that term to three months. The purpose of this change is to bring our Constitution into conformity with the Federal regulation. The United States Revised Statutes provide in this regard as follows: “The President is authorized to drop from the rolls of the army for desertion any officer who is absent from duty three months without leave, and no officer so dropped shall be eligible for reappointment, and no officer in the military or

naval service shall at any time be dismissed from service except upon and in pursuance of the sentence of a court martial to that effect, or in commutation thereof." By the adoption of this proposed amendment our Constitution is brought in perfect conformity with the United States regulations. I move that this amendment, Mr. Chairman, be approved and recommended to the Convention, to be advanced for a third reading.

The Chairman — The motion before the House is the motion of Mr. Latson, that General Order No. 33 be approved and reported by the Committee to the Convention. Those in favor will say Aye, opposed No. The motion is adopted and the proposed amendment is reported favorably to the Convention. Under the resolution adopted by the Convention, if I understand it correctly, General Order No. 43 is next. The Chair recognizes Mr. Lindsay.

Mr. Lindsay — At the close of my remarks on August 4th, which I presume most of the members heard, and which are to be found on pages 1233 to 1236 of the Record, I had covered most of the particular matters of which, as Chairman of the Committee, I desired to speak. Near the close of those remarks I had read a copy of a divorce proceeding which was taken from the records of 1888 of the Peacemakers' Court of the Allegany and Cattaraugus Reservations. I was about to read another communication, a copy showing how the matter stands at this time in those courts. And I have here a communication to the President of the Convention which was referred to my Committee, from William E. Lockner of Lockport, an attorney who has for a number of years acted for Indians in Indian suits. He was the attorney who appealed the case to the Court of Appeals recently decided in that court on the question of the prosecution of an Indian for a crime committed against another Indian on a reservation. He says: "Please hand to your Committee on Indian Affairs the enclosed copy of divorce decree which a client of mine recently sent me from the Cattaraugus Indian Reservation in this State. The same speaks for itself. So much has been written during the past twenty years upon the folly of our tolerating the mockery of an Indian court system upon certain reservations in this State that it would be useless for me to attempt to add anything further by way of criticism thereon. In my judgment there is no hope for the Indian until they are treated as adults, made citizens, their reservations blotted out and they themselves subjected to our general law. I tell you this after twenty years of constant experience with them and their tribal affairs. I believe the State of New York, acting by itself, has enough sovereign power to take up the question and apply the remedy. If it does not see fit to act, the solution of this

problem no doubt will be postponed for many years." Accompanying that is a copy of a divorce granted on the Cattaraugus Reservation in April, 1913, which brings it pretty close down to date. You will see there is a slight improvement over the one which I read in my former remarks, and yet you will notice this: that it is a divorce granted upon motion and granted upon default.

"At a Peacemakers' Court held at the office of said Peacemakers in and for the Cattaraugus Reservation.

"State of New York, this 28th day of April, 1913.

"This action for a divorce having been regularly begun by the process on the defendant.

"King Scott vs. Sarah Scott.

"Having come on to be tried and having been tried this day and after the proof of the plaintiff having been heard and argument of counsel for the plaintiff having been heard and due deliberation having been had thereon, defendant did not appear. It is now on motion of counsel for the plaintiff.

"It is hereby ordered and adjudged that the bonds of matrimony between said King Scott and Sarah Scott be dissolved and the same is hereby dissolved accordingly and the said parties are and each of them are free from the obligations thereof.

"It is further ordered and adjudged that it shall be lawful for the said King Scott to marry again in the same manner as if the said Sarah Scott was actually dead.

"WILLIE JOHN,

"JACOB M. JIMERSON,

"Peacemakers."

I take it in that case that it was almost an *ex parte* proceeding, and that is the latest thought that I have of the divorce court in the counties of Cattaraugus and Allegany. Now, all the information of the Committee is that there has been practically no improvement in these Peacemakers' Courts in all these years. In the testimony that was taken by what was known as the Whipple Committee, and also by the Committee of 1905 and 1906, evidence of Indians shows that their rights of property cannot be depended upon; that some property is assigned — a piece of land — to an Indian. He stays on there for fifteen or twenty years perhaps, and someone else says, "That land is mine. After the death of So-and-so's father, at the death feast, it was decided that that property belonged to me." He goes before the Peacemakers and they hear it, and they talk among themselves and generally talk it over, and one of them says, "I was there and I didn't hear anything said about that." But this is all at what is known as the death feast. The result is, however, that someone with some influence succeeds

in getting that land away from the person who has been theretofore in possession of it. Now, in following this evidence through I find this to be the case: That those cases are sometimes appealed to the council; but I don't recollect of a single one in which they testified that the council ever acted. They say it seems to be dropped when it goes to the council, and the Indian has no remedy because he cannot come into the courts of this State at all to preserve his property. Now, I am going to read a letter from a full-blooded Seneca Indian woman, which I received only the other day. It not only shows the degree of intelligence of some of these Indians, but it shows what the really intelligent Indian, who is not mixed up with the ruling body, believes is necessary for the good of the Indians at this time.

“ IRVING, N. Y., July 27, 1915.

“ HON. JAMES P. LINDSAY,

“ *Constitutional Convention, Albany, N. Y.:*

“ Dear Sir:

“ I was very glad to hear, also to read in one of the papers that the Committee on Indian Affairs, of which you are Chairman, had decided to report favorably a resolution to abolish the Indian courts and make all Indian matters subject to the general laws of the State.

“ Being an Indian and having always resided here on the Reservation, personally I feel that for the welfare of us Indians, our Indian matters should be subject to the laws of New York State, for the recklessness of our courts in rendering decisions is disgraceful.

“ Inefficiency of our officers in both Peacemakers' court and Council causes me to write this letter in favor of abolishment of our courts. Some of our officers cannot read or write, understand very little of the English language, and the chances are they will be more or less intoxicated during the Council. How can one expect an argument in the English language to receive a fair consideration in Peacemakers' court and Council under such conditions?

“ What encouragement is there for any of us to try and make improvements if we are not going to be protected? I feel certain if we are not protected by the laws of this State in our property rights, we cannot advance very much.

“ With the abolishment of our courts and becoming subject to the laws of your courts, I feel confident that we will be protected and justice will be given according to evidence. Through this agency we would learn that there is such a thing as law and that it must be respected.

"Hoping that the resolution abolishing our courts will be adopted and that you will do all that you can for its advancement, and that by so doing you will be convinced that it will be for the permanent good and advancement of us Indians; thanking you for all that you may do and have done, I remain,

"Yours respectfully,

"MRS. PERCIVAL C. LAY."

I take it that Mrs. Lay is probably a graduate of one of the Indian schools, from her writing and her language. I may say also in 1914 there was a law passed by the Legislature permitting an appeal from the Peacemakers' Courts to the county courts of the county. That law was repealed by the Legislature of last winter. When it came up before the Governor I was approached by an Indian here from the reservation, in fact, I think the Indian missionary on the reservation of Cattaraugus or Allegany or both, asking me to take him to the Governor for the purpose of protesting against the repeal of that law. I went with him to the Executive Chamber and found that the bill had just been signed. He was very much disappointed and he said to me "that will create murder among the reservations because those Peacemakers take lands away from us and they are likely to commit murder." Almost immediately one brother shot another on that reservation over that very thing and my attention was called to it again to-day by a letter from Mr. Andrus, an attorney of Buffalo, in which he said it was a direct result of the fact that they could not appeal and could not protect their rights on the reservation. I have here also another letter from a full-blood Mohawk, a graduate of Philadelphia college and living upon the Onondaga reservation. He writes more particularly in the first part of his letter as to citizenship of Indians, of how much a number of the Indians desired citizenship; but he writes some things which I think will be of interest to this Convention and also gives some reasons for the action which the Committee took in this matter. He says, "Is it the intention of the State to keep the Indians always on the abominable reservation system, doling out money and clothes to them? Are they to be treated as children forever? Is it any wonder that over half of them use intoxicants to excess and that they are on breeding ground for dishonesty, immorality, indolence, and that over one-half of the Onondaga Indians are still pagans with all the rites, ceremonies, and dances in vogue one hundred years ago. The younger generation should be encouraged for citizenship and not go back. The fact has been that many do go back and they have no desire to be any better than the rest.

"* * * I am a Mohawk Indian, educated in Philadelphia, Pennsylvania, public school, graduate of Central High School,

graduate of Dental Department, University of Pennsylvania, and am now in the Methodist ministry, being pastor at Onondaga Indian mission. For years I have desired citizenship. I have felt it a duty and there is nothing I would prize so highly. Are we compelled to wait for the rest who through the reservation system have had desire and ambition knocked out of them? Do we have to wait for the chiefs? If that is the case then we are a hopeless case for they have no idea of fostering such a notion."

He became somewhat eloquent, reminding me of the speeches of the Indians of the olden times. In conclusion he says: "When you see an Indian in a circus or a drunken one on the street or some selling baskets or bead work, are you not moved with pity for the aborigine, the first inhabitant of the land, and his helpless condition? There are some Indians who mean to do better and advance and be an honor to the community.

"Give us a chance to be a man, to be somebody, to be something in the State, instead of being classed with minors, imbeciles, lunatics, criminals. * * * 'Lo! The poor Indian,' is an expression of pity, but we merely want a chance.

"Respectfully yours,

"....."

So you see there are a number of these Indians who if the opportunity were presented could do something for the other Indians on the reservation, and it shows also that Indians under proper conditions can become well educated and good citizens. I have other letters tending in the same direction but I will not take time to read them. I have one letter from N. C. Patterson, on one of the reservations, and one written to-day to another member of the Committee from Charles Dodson, who states, I believe, he is an Indian on the Onondaga reservation. But we find, outside two or three persons who have been either president or secretary or treasurer of the nation, most of the Indians desire to be governed by the laws of the State. They desire their property to be protected by the laws and the courts of the State. These officers of the Allegany and Cattaraugus reservations shift back and forth. One is president one year and the other is secretary and the other is treasurer, and shortly after that there is another shift. All the same persons keep in office. As I understand it the money is all handled by them but the Indian himself, the ordinary average Indian, knows very little about it. These Indians have been able to come down to the Legislature with other persons interested with them in keeping the Indians in that condition because of the financial benefits to be derived — white men, and they are the only ones who appeared here. They have succeeded from year to year in convincing the Legislature that certain

laws are the laws for the Indians, while the ordinary Indian is never heard from and he is kept there under subjection of these ruling members and absolutely never knows if he possibly saves up five hundred or a thousand dollars and gathers that much personal property, whether he has any law to protect him in his possession. Now that is one feature of it, so far as Allegany and Cattaraugus and Tonawanda reservations are concerned. But if you go to the other reservations, they have not any law at all except a few special laws made in the last several years for their benefit. In the St. Regis reservation I remember in the testimony in a certain case they stated that they did not know what law they were subject to and could not find out. Some told them they were subject to the State law, some told them they were subject to the United States law, and when one of them was asked what should be done, he said "I think we could go down to the town and get a white man and bring him up here and let him administer justice for us."

Now all the Committee asks to do is this: First, abolish these peacemakers' courts and abolish the divorce courts of these reservations. When that is done it transfers the jurisdiction to the State court. It is very easily done because they are in the same town and county as the people who come under the other courts. There is no difficulty about it at all. With those courts abolished, they simply come under the jurisdiction of the courts of their own town and county. Now that is the actual fact with the Tuscarora in my county and the actual fact with a number of the tribes in the State, but it is never certain and has not been for years in this State what rights an Indian has in the courts of this State. It was decided some years ago that an Indian had no rights in the courts of this State unless they were conferred upon him by the State. Now the proposition of the Committee is that those courts should be abolished and jurisdiction put upon the courts among which those people live and that the general laws of this State should apply to Indians as well as white men. Now I know the first impression is among some members whose attention has been called to it that possibly the laws of the State are not applicable to Indians. You will find on investigation of the special laws outside of the court laws made for the Indians — and I have gone over them a dozen times — I have an abstract of all of them here — that the conferring of the general statutory law upon the Indians will not conflict with any of them whatever, so that there is no danger from the proposition at all. We except the treaties of the United States, the laws of the United States and the treaties of the State of New York. Now the question has also been raised and my attention has been called to it by

the two Indians who wrote, whether this proposition would interfere with the tribal lands of the different nations. It is not intended to nor could it possibly interfere in any way with the title to the tribal lands of the Indians. The tribal lands of the Seneca Nation, which include these two reservations, Allegany and Cattaraugus, are guaranteed to them by the United States, by a treaty, to them and their descendants forever and nothing this State could do, nothing the United States could do without the consent of Massachusetts, nothing that any of us could do without the consent of the United States, the State of Massachusetts and the State of New York could interfere at all with the title to those lands. Now all the other lands where they are not held in fee by the various tribes are owned by the State of New York and they are all guaranteed so far as the possession is concerned. The title is absolutely in the State of New York, but they are guaranteed possession, possessory title to these reservations to the Indians forever and their descendants by treaty, or contract which they call a treaty. So that extending the laws to them does not have any effect whatever on these tribal lands. It would have this effect upon the descent of personal property and it would make the State laws applicable to the descent of personal property. It would make the State laws applicable to the descent or distribution or whatever interest an Indian had in the allotment, but that is no change in the law because our State law has already been held to apply. Three or four of the Appellate Divisions within a short time have so held. So that the law we propose can in no way affect the Indian except to abolish these courts and give him the benefit of the laws of the State of New York.

Now it seems to me, in conclusion, that the time has come when the Indian should have some recognition in our Constitution. These people had for their dominion the entire State of New York before our ancestors ever had anything to do with them. We have never recognized them in the Constitution of the State of New York, further than to say that a contract for the sale of their lands could not be made without the consent of the State of New York, and it was not necessary for us to do that because that was protected by the United States law, or by the State treaty. We have treated them as children for a century and a half and they are no nearer civilization and citizenship in this State, suited for it, than they were half a century ago and it is because of this very fact that they do not know whether they are governed by the laws of the State of New York or not. Some of them think that the United States has complete control of them, consequently they just go along living from day to day, from generation to generation, without any ambition, and without any

idea of where they are going to land in the end so far as citizenship in the State of New York is concerned. The Negro, brought to this country savages, many of them, after the American Indian became subject to our loving care in this State, has gone through a long period of slavery; had absolutely no education, no training, probably when first brought across had no knowledge of our language, and yet to-day he has become possessed of full citizenship and, except for a few State reservations in the matter of educational qualifications, is a voter in every State in the Union. We have been away behind in our treatment of the Indians in this State. It has been my pleasure to live in the western States prior to twenty years ago all my early life, and I am surprised that in that State, a new State that has been admitted in the last half century, thousands and thousands of Indians have been made citizens by the United States. Not naturalized but declared to be citizens with the rights of citizenship. Indians who were absolute savages when we were passing laws here for the government of those Indians. Take it out in the Indian Territory; they have Indians there who are the wealthiest men in the country, with large properties, and all through the fact that their property was allotted to them and they came to realize that they had something to do with the government. And they are just as good citizens, just as intelligent as any of the citizens there. Now if we ever expect to get rid of this blot of the reservations and of a people in tutelage in this State, and of the vile provisions in regard to marriage and divorce, we have got to do something. The committee has gone as far as it thinks it could at this time. We cannot, of course, grant citizenship to the Indians. That is a governmental matter, if it is necessary, but we can give them the benefits of our courts and the benefit of our laws and tell them that they are governed by the laws of this State. I tell you that it will go a long ways towards bringing about reforms; that, eventually, when the United States can abolish these reservations on which they are hampered now by an outstanding right as to two of them, it will go a long ways toward the final act of the abolishing of the reservations and the full citizenship of the Indian and the absorption of these Indians into our citizenship.

Mr. Reeves - I have been asked by the Chairman of the Committee on Bill of Rights to report that the two amendments, Introductory Nos. 279 and 439, were referred to our committee for our opinion and those two have practically been incorporated in this which is before the Convention to-night. The primary question that was discussed and worked upon by the Bill of Rights Committee was the question whether or not the abolition of these special Indian Courts would affect the titles to the real property

that these Indians hold; whether, for example, it would be possible for shrewd speculators to get in there and get interests in property and then bring partition suit, or suits to quiet titles against the Indians and unfairly deprive them of their interest in the land. We held several conferences, through a sub-committee with the sub-committee of the Committee on Indian Affairs and went especially into the question of titles quite carefully, and we report that we are in entire accord with the Proposed Amendments. The Indians' interest in the real property is simply that of occupation. In a good many of the cases the Federal Government still controls the disposition of their lands. The State of New York holds its hand upon them and the fee cannot be disposed of or partitioned or taken from them without the consent of the State, and we find in some instances by virtue of treaties between the State of New York and the State of Massachusetts, even the consent of the latter state would have to be obtained to take the titles out of these reservations and deprive the Indians of them and to pass them over to outsiders. We may find a few instances, for example, among the Shinnecock Indians where titles in fee simple have been transferred to them, but to carry over all the trials and proceedings from these half-hearted Indian courts to the State courts will not affect those titles or give any disadvantageous proceedings against the Indians that would not exist under the present law, and, therefore, we concur in this report and hope it will be adopted.

Mr. Wood — I am interested in the amendment so far as it affects the Tonawanda band of Seneca Indians for the reason that their reservation containing about 7,500 acres lies almost entirely in the county of Genesee, in which county I reside. I was attorney for this band for six years while I was district attorney of the county, and, therefore, I am more or less familiar with the reservation and the customs and laws of the Indians residing on the same. I know something of the Peacemakers' Court consisting of three peacemakers elected annually on the "short ballot" with the President and Clerk. Though never admitted to practice in this court I have, however, attended some of the trials therein and it was amusing and interesting to listen and watch the proceedings. In the trials in this court the question of the competency or materiality of evidence does not cut any figure, and upon the question of exhibits, if a trial was on regarding the ownership of a horse for instance, the animal would be in court or just outside the building as an exhibit. This court while one of first resort is not by any means a court of last resort, for an appeal lies from the decision of this tribunal to a court composed of six chiefs, the Appellate Division so called, and it reviews not only the law,

but the facts or anything else that comes under its consideration. When the litigants get through this appellate court — after judgment is rendered in favor of one Indian against another — then the judgment must be enforced by suit before a justice of the peace of one of the towns adjoining the reservation. Now it seems to me that when the Legislature, in codifying the laws a few years ago relating to the Indians, created this appellate court and fixed the fees of these six Sachem chiefs who constitute court at 25 cents each, it belittled the court. I think the Peacemakers' Court should be abolished, both the trial and appellate branches and the Indians be required to litigate their differences in the State courts. I do not know whether a copy of the proposed amendment abolishing the court was sent to the Committee on Judiciary or not, but assume that it was not. I trust that the Committee on Indian Affairs, when it had under discussion the abolishment of the Peacemakers' Court, remembered the words of the scriptures: "Blessed are the Peacemakers for they shall be called the children of God." There is one matter, however, that disturbs me somewhat, and that is this: The Tonawanda Indians are not a nation, they are a band of the Seneca Nation of Indians, one of the six nations, the other five being the Cayugas, Oneidas, Onondagas, Mohawks and the Tuscaroras, the last one taking the place of a tribe or nation of another name. The Tonawandas are designated in this amendment as a nation and not a band as they are. I understand from the Chairman of the Committee and other members of it, that they get their authority for so designating them from the general laws relating to the Indians. If the Legislature has made a mistake in so designating them, I do not think we should continue it in the Constitution when they are a mere band and are so classified among the New York State Indians. The other provisions of the amendment do not affect Indian customs, and especially the custom which prevails in the Tonawanda band for the adoption of white men and women into the band and conferring upon them various titles and names. I always declined that privilege fearing that they might confer upon me the title of White Beard, Bald Head, Highball, or something of that character. If I could have been assured that the title or name to be given me was something like the one given a member of my wife's family, "White Dove," I might have stood for adoption into the band.

Mr. Westwood — I assume that this Committee is ready to vote upon this proposition. I do not understand there is any opposition to it, and, with the exception of a matter which I understand Mr. J. L. O'Brian intends to present, I fancy there will be no one that wants to discuss it and I shall not do so. I do want to say,

however, that in the 51st Senatorial District, from which both Mr. Whipple and myself come, there are two Indian reservations and the question is therefore a live one with us. Mr. Whipple feels very strongly that this Proposed Amendment should go through — so do I — but he has consumed so much time in the Convention to-day that he feels a little timid about occupying any more of the Record. I shall not say anything further than this, that in the Senatorial District where are located the two reservations of which I speak, the sentiment is practically unanimous that this, or this in substance, should be done. I will not assign reasons for it, because I do not believe it is necessary. The Proposed Constitutional Amendment ought, we think, to pass.

Mr. Weed — I would like to ask the Chairman of the Committee whether this phrase — “Except as otherwise provided by the treaties of this state, and the Constitution, treaties and laws of the United States, all general laws of the state, whenever enacted, shall apply to and be binding upon all the Indians within the state,” grants them any right of citizenship.

Mr. Lindsay — It does not. I just want to speak of one matter of which Delegate Wood spoke as to our reasons for the use of the words “Tonawanda Nation.” Unfortunately, the State in conferring these courts upon these Indians defined what was Tonawanda nation and the Seneca nation, and we have used the expression used in the courts and I will read Section 40 of the Indian Law:

“Section 40. Use of terms. In this chapter the Seneca Indians residing on the Allegany and Cattaraugus reservations are designated the Seneca nation, and the Seneca Indians residing on the Tonawanda reservation are designated the Tonawanda Nation. * * * The councilors of the Seneca nation, and the chiefs of the Tonawanda nation, in council assembled, are designated, in this chapter, the council of each of such nations respectively.”

Then in Section 41, it says:

“Section 41. Enumeration of officers. The government of the Seneca nation by chiefs is abolished. Each nation shall have as officers a clerk and a treasurer. The Tonawanda nation shall have a marshal and three peacemakers,” etc.

So that the law itself keeps calling them the Tonawanda nation and we thought, of course, we had to use the term that the statute had conferred the courts upon them under. They are really a band of the Seneca nation.

Mr. Unger — Mr. Lindsay, what is the reason for putting this in the Constitution? Is not this purely a legislative matter?

Mr. Lindsay — I don't think so. The Constitution is for the purpose of preserving and guaranteeing certain rights to the inhabitants of this State. We have guaranteed the rights to everybody else in the State except some six thousand members of the original inhabitants of the State, and I think it is high time that they had a place in the Constitution. But, practically, the reason is this: After all the reports of which I have spoken, the Legislature has not done a single thing to carry out the recommendations of those courts, or any recommendations that have ever been made in this State. What they have done is this: There are about three Indians that control affairs. As I say, they shift the offices back and forth. With them come down a certain number of persons who are interested in the oil lands of the Indians or matters of that sort, and they want persons to deal with, and it is very convenient to deal with these three or four persons who are running that nation. They come to the Legislature and the legislators, as a rule, pay no attention to it. They ask that a bill be passed. No one wants to give any attention to it and it is passed. Some one else who wants to take care of the rights of the Indians comes to the Legislature and gets a bill passed, such as I spoke of, allowing to these Indians an appeal to the county court. It gets through, but the next winter those same parties come down and have it repealed. Now for forty years that has been going on and not a thing has been done to protect the ordinary Indian in relation to his property and I think it is high time that they had some protection in the Constitution so that they may know that their rights will be protected in the courts of the State, the same as those of a white man. Away out in Nebraska the Constitution of that State years ago when the State was organized said that no person should be denied the rights of the courts of the State and Justice Brewer in construing this section said that it permitted any Indian within the State to bring any action in the courts of the State, and he was protected by it because that was in the Constitution. Such provisions are in many Constitutions of the western States. New York, as I said before, is behind all of them and has never said anything in its Constitution in the way of protection of these original inhabitants.

Mr. J. L. O'Bran — Mr. Chairman, I am very heartily in favor of this amendment and I trust that there will be no doubt about its passage. The Indians in this State have fallen down into the abyss between the sovereignty of the nation and the sovereignty of the State, with the result that for many years no one has paid any attention to them. The status of the Indians in the State has been unsettled, as a matter of law, until very recent occurrences in our

courts, and evidently without the care of any Indian agent — these great reservations in western New York are not patrolled by any force in behalf of the Federal Government, nor are they patrolled by any force in behalf of the State government. Serious crimes occur there. Murders sometimes go unpunished. The whole history of the two sovereignties toward the Indian tribes has been one of shameful neglect; and, as the last speaker, the chairman, said, the Legislature of the State of New York unquestionably has been remiss in its duty towards these dependent people. The courts have been subject to most serious criticism as far back as any one can remember. During the time that I was federal attorney in western New York I had the privilege of acting as adviser under some of the old treaties for some of these tribes; that is, when they could not get the advice they wished from some one else they came to me. I became quite thoroughly familiar with their method of administering justice, so-called, and all that Mr. Wood says and all that Mr. Lindsay says is absolutely true, and a great deal more might be said. The courts are inefficient, partly because they permit a certain variety of white lawyer to practice in them. These lawyers have the Indian names that Delegate Wood has referred to. I never heard one of them called White Dove, but I know that some are called Gray Wolf and Hungry Dog in the Indian dialect, and this small coterie of lawyers practice in these Peacemakers' Courts. If the Peacemakers' Courts were allowed to go along as they were in the ancient tribes, when men of integrity among the Indians came and plead causes for other Indians, that would be one thing; but they have been made the instruments of oppression. Many of the so-called Indians are people as white as you are; and the strange thing is, and the sad thing, that the whiter they are the more dangerous they are to the Indian — the fellow-Indian.

Now, I think that something should be done, and I think that the Committee on Relations to the Indians deserves a great deal of credit for the painstaking work they have done in this field. Legislature after Legislature — and I can speak from my own personal knowledge — has gone on neglecting this subject for fifteen, twenty or perhaps thirty years, ever since the time that Commissioner Whipple drew his report, which is to-day, by the way, the leading authority in the way of text-book upon Indian relations in this State. To embody this in the Constitution will enable us to sweep away these courts, which are not courts of justice, which are not Indian courts, but which simply are instrumentalities through which the wicked prey upon the unsuspecting. The Indian is a simple person still, when left to his own devices. He is easily imposed upon, and he has been made the victim, as I have said now

two or three times, over and over again, through the instrumentality of these courts. I was going to suggest, in the interest of accuracy, an amendment in line 6 of this bill. I do not care to suggest it unless it is satisfactory to the Chairman of the Committee, because I am very much in favor of the passage of the bill.

It seemed to me that in line 6, page 2, the expression "and be binding upon" was an expression which has no fixed statutory definition and is somewhat awkward as a phrase to include in the Constitution. The other expression "whenever enacted", it seemed to me — I may be mistaken about it — but it seemed to me that that expression might lead to some doubt in interpreting the section as to whether it was intended to have a retroactive force. In the interest of clearness I will suggest an amendment, if agreeable to the Chairman: On page 2, line 6, strike out the words "Whenever enacted" and also the words "and be binding upon" so that the section would then read "Except as otherwise provided by the treaties of this State, and the Constitution, treaties and laws of the United States, all general laws of the State shall apply to all Indians within the State." I should like to offer this amendment, if it is agreeable to the Chairman of the Committee.

Mr. Lindsay — Mr. Chairman, we have no objection to that. In regard to the words "whenever enacted", we believe on further consideration it is not necessary to have them. I agree with Mr. O'Brian that the words "and be binding upon" may as well be left out; in fact, I had so made up my mind some time before. The words "and be binding upon" are simply words that I employed in the original amendment, just as I sketched them out, and they were retained. I do not see any particular use for them.

Mr. R. B. Smith — Mr. Chairman, I suppose I am responsible for that language. While, like Mr. Marshall, I am not a stickler on language, nevertheless, I do not want it to be held to be the construction that it applies only to the general laws in force now. Of course, the words "and be binding upon" are words which are used many times. They may be old-fashioned English, but they appear many times in the statutes of this State and have appeared many times for the past twenty years, which perhaps has had something to do with their insertion. There cannot be any ambiguity about them. They mean what they say. They are possibly surplusage. If the judgment of the Committee is that they are surplusage, I am perfectly willing to consent that they go out. But the other proposition — the Constitution, of course, should provide a date when it takes effect. Now perhaps the words "now or hereafter in force" is the exact language that we want, and that I will take. Perhaps "whenever enacted" refers to its possible effect or some time in the distant past, but "now or hereafter in force" I think is the correct language.

Mr. J. L. O'Brian — Mr. Chairman, I think that the words suggested would be better, and I therefore withdraw that part of my amendment.

The Chairman — The Chair is uncertain now as to what you withhold. Is it the amendment with reference to "whenever enacted"?

Mr. J. L. O'Brian — My amendment reads, strike out the words "whenever enacted" and instead insert the words "now or hereafter in force." That is entirely agreeable to me and I think it is still more clear.

The Chairman — The question before the Committee is on the amendment as now corrected and offered by Mr. O'Brian. Will the Clerk read it so that there can be no mistake about the language?

The Secretary — Page 2, line 6, strike out the words "whenever enacted" and insert in place thereof "now or hereafter in force."

The Chairman — All those in favor of the amendment as proposed will say Aye, contrary No. The amendment is adopted.

Mr. J. L. O'Brian — Then there is the remainder of my amendment, which phrase I thought was tautological. If the general laws of the State apply to all Indians in the State, I think there is nothing to be added by the expression "and shall be binding upon." I understood Mr. Lindsay to say that he did not object to that.

Mr. Lindsay — I supposed that was embodied in your amendment, that the words "and be binding upon" would be stricken out.

Mr. J. L. O'Brian — May a vote be taken upon the motion to strike out the words "and be binding upon"?

The Chairman — The amendment offered by Mr. O'Brian is to strike out the words on page 2, line 6, "and be binding upon". Those in favor will say Aye, opposed No. The amendment is adopted.

Mr. Leggett — Mr. Chairman, I merely wanted to say that, inasmuch as I live within sight of one of these Seneca reservations and am somewhat familiar with the conditions — I want to add my testimony to that of the members of the Committee that the conditions are as they have related them, and that it is very appropriate and necessary that this proposal be adopted in justice to the poor Indians.

Mr. Hale — Mr. Chairman, I do not think that the discussion is complete without reference to the St. Regis tribe, and I want to concur, in their behalf.

Mr. Sanders — Mr. Chairman, I would like to call attention to this fact, in connection with this Proposed Amendment. On lines

1 and 2, page 2, we find this language: "All actions and proceedings now pending in such courts and agencies of the Indian nations and tribes shall be transferred for determination to the proper courts of the State." I would like to ask the Chairman of the Committee what would be the effect of this provision upon a proceeding pending in the Peacemakers' Court of which two courts of the State would have concurrent jurisdiction?

The Chairman — Does the Chairman of the Committee yield for the question?

Mr. Lindsay — Of course, there are not likely to be many cases pending. My judgment is that if a case was pending undetermined in the courts when the courts were abolished by the adoption of the Constitution by the people the case would fall to the ground. If the party wanted to continue his case, he would have to transfer it to the State courts and they would continue with the case there.

Mr. Sanders — Will the gentleman yield to a further question? The words I refer to are "all actions and proceedings * * * shall be transferred for determination to the proper courts of the state".

Mr. Lindsay — Well, I thought I had answered that. If the case is pending and the courts go out of existence, automatically they go into the State Court within the jurisdiction of the Justice of the Peace, as it would have to be if transferred to the nearest justice.

Mr. Sanders — Suppose it were an action to recover damages in the sum of two hundred dollars. It would be within the jurisdiction of a Justice of the Peace, and it would also be within the jurisdiction of the Supreme Court and the County Court.

Mr. Lindsay — Well, that statement does not apply, because the Indian courts cannot render a judgment to exceed one hundred dollars — couldn't get into the two courts.

Mr. Sanders — Well, then — I don't think that answers it, because an action to recover damages for seventy-five dollars would be equally within the jurisdiction of the Supreme Court and the Justice Court.

Mr. Lindsay — I understood that this wording that was used, is the exact words that were used in transferring the jurisdiction of the courts in 1894.

Mr. Westwood — Mr. Chairman, I see no difficulty with the language referred to by Mr. Sanders. The same question came to my mind as I read over this bill, and as I understand it the proposition he makes is this: That unless the provision of our Proposed Amendment goes more into detail it may not cover cases now pending, of which two or more State courts would have concurrent jurisdiction. Some of those pending cases will easily find

their way into the correct court where the demand is small enough to go into the Justice Court. But there are cases which, by reason of diversity of residence, or the amount involved, could not get into the Justice Court and would have to go into County or Supreme Court. But it would seem to me to be a perfectly fair construction of this act that where a case was pending of which the two or more State courts would have concurrent jurisdiction, the plaintiff in the Indian court would have the same right by motion in any one of these three courts to select which one of the three courts having concurrent jurisdiction he proposed to prosecute his case in, that he would have if he were bringing his action originally in the State courts. Without doubt he will have his motion in the court into which he wishes to go. Certainly the State courts will give full and proper effect to this constitutional provision.

The Chairman -- The question is on the motion of Mr. Lindsay for the favorable report from this Committee to the Convention of General Order No. 43, as amended.

Mr. Lindsay -- In order that the record may be complete, I make that motion, that the Committee report General Order No. 43, No. 769, with the recommendation that it be adopted.

The Chairman -- All those in favor of the motion will signify by saying Aye, those opposed No. Carried.

Mr. Latson -- Mr. Chairman, my attention has been called to the language used in line 5 of General Order No. 31, which has already been moved, and for the purpose of making a correction in that language, I move that we reconsider the motion by which General Orders No. 31 was approved and recommended to the Convention for third reading.

The Chairman -- The motion by Mr. Latson is that the motion by which General Orders No. 31 was approved and recommended to the Convention for third reading be reconsidered. All in favor of the motion signify by saying Aye, those opposed No. The motion is carried.

Mr. Latson -- I move that line 5 of General Orders No. 31 be changed, that the word "with" be eliminated, and the words "shall have" be substituted for the word "with," so that the sentence will read "All other commissioned and non-commissioned officers shall be chosen or appointed in such manner and shall have such qualifications as the Legislature may deem most conducive," and so forth.

The Chairman -- You have heard the motion made by Mr. Latson. All in favor of the amendment offered by Mr. Latson, which I think you understand, will make it manifest by saying Aye, contrary No. It is adopted.

Mr. Latson — I move that General Orders No. 31, as thus amended, be approved and recommended to the Convention for its consideration.

The Chairman — Mr. Latson moves that General Orders, No. 31, as amended be approved and recommended to the Convention for its consideration. All in favor of the motion will manifest by saying Aye, contrary No. The motion is carried.

The Chair is uncertain as to the condition of the calendar.

Mr. J. G. Saxe — I think the next General Order is No. 48, Print No. 780.

The Chairman — The consideration of the Committee falls to General Order No. 48, page 7 of the daily calendar, as reported from the Committee on Suffrage.

Mr. J. G. Saxe — I move that that proposed amendment be amended by inserting after the word "vocation" on page 2, line 5, the words "or occupation", and with that amendment that it be reported favorably. Now, Mr. Chairman, I for one am certainly aware of the fact that we have had a long and hard day's work and I shall be very brief in what I have to say about this amendment. But I do want to certify this to the Convention that no amendment, certainly no amendment which fills so small a printed space as this, has had so much hard work upon it and so much consideration as this one has had. It has been before the Committee on Suffrage several times. It has been reported out and recommitted. It has been submitted since it was reported again and I think every member of the Convention who had anything to say upon it or who had introduced any bills in reference to it prior to the time or at the time of the former debate upon it has had his say, and I think I can explain in a very few words just what this bill does. This particular section was one of the compromises of '94. The subject of registration has been debated for a period of seventy years, and the section needed a good deal of change in the matter of phraseology alone, and the first amendment which is notable at all on this page is the simple change of the word "voters" to "electors", so as to make the section correspond with the other sections in the Constitution relating to elections. The change in line 6, and line 8, including the word "annual" and the word "general" is very necessary in order to meet something in the Constitution which is virtually meaningless to-day. They carry out the statute laws that exist, but the claim has been made in the Court of Appeals that the Constitution does not even require an annual election. Whereas, the claim in the same litigation has been made that there must be a registration not only for every year, once a year, but also that there must be a special registration for every referendum and every special election.

Now, the laws of our State provide that there shall be an annual registration and that should be before each general election and this proposed amendment makes clearly constitutional the exact condition of the statute law to-day. The provision changed the last day of registration from fifteen days to ten days, and it was argued before us very completely by delegates to this Convention and by a very considerable number of citizens. For many years the Legislature fluctuated back and forth between a provision of ten days and a provision of twenty days. The provision of ten days has been regarded for a good many years as being too short and as a sort of compromise between the ten and twenty-day period, in order to give a little more time for the examination of registration lists and a little greater time to allow candidates to see the lists of those registered in order to make a much more effective campaign that time has been put back five days, or fifteen days. And the last provision, and the provision which has received a great deal of consideration, so far as the proposed amendment is concerned, is the one dealing with absentee registration. There seems to be a very great sentiment in this Convention in favor of absentee registration, but the difficulty which has perplexed every one of us who have been in favor of it in one form or another is how we can phrase a Constitutional Amendment which will be general in its term and not permit fraud and at the same time will not put us in a position as writing such a term as "Commercial Travelers" into the Constitution of the State of New York. Now, on that particular phrase we have all worked. I will venture to say that there are thirty of us who have tried to work out the situation, and the keynote to this proposed section is to be found in the words "designated and defined." In other words, we leave the whole thing to the Legislature to choose these classes. We merely allow registration, without personal application in those classes whom the Legislature in its wisdom shall designate, and then if they have difficulty in designating them because of the difficulty in the use of terms, it will define its term. Now the single amendment which I move was moved at the request of a number of those who are very much interested in the class of students at universities. They felt there must be a large number of those who had great difficulty in going home to register for an election, and it was felt that if there was any right that was going to be conferred upon any general class, this right ought to be extended to students, or, at any rate, the Legislature ought to be empowered in its discretion to extend that to students, and it was felt that that could be readily done if the words "or occupation" were added instead of using the single term "vocation," and that has been acceptable to several learned

educators in Albany with whom I have conferred before offering the amendment. I cannot tell you, gentlemen, how much work we have done to work up this section, and I hope that, with that single amendment, it will meet with your approval.

Mr. Clinton — I notice that in line 7, page 2, you use the expression "proper proof by such elector of the foregoing facts shall be required." Do you not regard that as a little indefinite, "proper proof"?

Mr. J. G. Saxe — The words "proper proof" is the way it is used in the other portions of this and other sections of the Election Law to cover that exact situation.

Mr. Marshall — And it is also contained in line 4, page 1.

Mr. J. G. Saxe — Yes, and as suggested by Mr. Marshall it is contained in line 4, page 1, and it has been construed by the Court of Appeals.

Mr. Marshall — And it has been in the Constitution for a number of years.

Mr. Schurman — I can see that the problem you have before you was a very difficult one, because you had to get down in general language an expression which would embrace a variety of classes. I was wondering after hearing you whether instead of inserting after the word "vocation" the words "or occupation" you might not carry out more effectively the object of that provision by inserting in the same line 5 after the word "defined" the following: "or in attendance at an educational institution."

Mr. J. G. Saxe — We had that language under consideration before. I think this language does it better. I made that same suggestion to the Committee when we were thinking about writing it into this section, the classes, instead of leaving it to the Legislature, but I prefer to leave it "vocation or occupation," and leave the designations to the Legislature.

Mr. Schurman — Mr. Chairman, may I ask Mr. Saxe, then, if he considers that "or occupation" does include the class who are attending educational institutions?

Mr. M. Saxe — Absolutely.

Mr. Lincoln — I hope that this Convention will not go upon record as approving an amendment which provides for the Legislature specifying some particular vocation which shall have a preference over other vocations or over other occupations as to the right of suffrage. That is precisely what the amendment which is proposed by Mr. Saxe will do. It proposes to leave it to the Legislature, to say, for instance, that commercial travelers shall have a right which railroad firemen shall not have; or that students shall have a right that commercial travelers shall not have. It seems to me that if the Constitution is going to permit any sort of absentee registration whatsoever, it should permit

registration of any person who can establish that he must necessarily be absent upon the day of registration. For that purpose, I move as a substitute in the language, in place of the language contained on page 2 of Mr. Saxe's amendment, language which was contained in Proposition No. 165, which was introduced by me, and which provides as follows: "Except that laws may be made providing that in such cities and villages voters may upon the first day prescribed for registration without personal application on filing with the board of registry proof as required by law that, they will not be able to register personally on any of the dates prescribed for registration."

Mr. Chairman, that leaves it open to the Legislature to prescribe the methods and the restrictions under which any person, no matter what his vocation, may be registered in case it is impossible for him to be present upon the first day of registration. The delegates will remember that this provision applies only to cities and villages having a population of over 5,000. It is unnecessary in case of communities under that size for the reason that absentee registration, or registration by proxy as it is called, is permissible in those cases, under the Constitution as it now stands. So that the only purpose of this amendment, or of the amendment proposed by Mr. Saxe, or any of those other amendments which look to settling this question of absentee registration, is to provide for such registration in the case of cities and villages of over 5,000 inhabitants. Now, it seems to me, Mr. Chairman, that this Convention ought to be very careful in considering a question of this sort, which proposes to leave to the Legislature the power to single out one occupation and say that the members of that occupation or vocation should have certain preference in registration which means a resulting preference in the right to vote.

The Chairman — The proposal by Mr. Lincoln is at the desk and the Secretary will please read it for the information of the Committee.

The Secretary — Strike out on page 2 the sentence in line 1 beginning "but provision" and ending in line 7 with the words "being required" and substitute therefor the following: "Except that laws may be made providing in such cities and villages voters may on the first day prescribed for registration be registered without personal application on filing with the board of registry proof as required by law that they will not be able to register personally on any of the days prescribed for the registration."

Mr. A. E. Smith — Mr. Chairman, while I am in sympathy with what is sought to be done here, to an extent, I do think

we are writing a lot of unnecessary language into the Constitution. It simply empowers the Legislature to make laws for the regulation of elections and ascertaining what proper proofs, etc., as to who is entitled to suffrage. I would suggest that all exemptions from personal registration be stricken from the Constitution, but that the Legislature be empowered to provide for absentee registration by law. That would make unnecessary all the language, the new matter on page 2, and it would leave something like this: "Laws shall be made for the regulation of general and special elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage and for their annual registration which shall be completed at least fifteen days before each general election. Such registration shall not be required for town and village elections except by express provision of law." Now jump down further, to line 12, first page, and "electors shall be registered by personal application except otherwise provided by law." Twenty years ago there might have been some reasons why the citizens in the small towns or villages of less than five thousand should not be required to appear personally, for registration, but that reason does not exist to-day. But very few towns in this State, probably the ones in the Adirondack region only, where it is any hardship to a man to come around and register, and special provision could be made for those towns by act of the Legislature. But there exists no reason to-day why a man in Putnam or Dutchess or any of the river towns should have his name carried year after year on the registry list without his making any personal appearance.

Now we have heard an awful lot in the last five or ten years — the last ten years particularly — about fraud at elections and the men that proclaim the loudest about the manner in which the elections are conducted in the more thickly populated centers come from districts themselves where if the fraud is not committed there is abundant opportunity to commit it. Now every time you raise this argument in the Legislature they say: "Why, in the little country districts everybody knows his neighbor; there cannot be anything wrong there, they are all so well known." One member on the floor of this House said: "Yes, and they even know the neighbor's horse when he goes down the road," and somebody forthwith suggested that possibly the horse might answer for him on election day if he was away. Now I speak from rather a personal experience with this matter. About five years ago a man that lived for a number of years in one of the Hudson river towns moved to New York and he registered from some number on Morningside avenue and between the day of registration and election day he met a friend running for office and his friend experienced great surprise to think that he was

voting away from his old county where he had spent his early boyhood days down on the farm where everybody knew him and where he came back once a year and cast his vote. He thought it over and decided he would vote up there. Now that is entirely possible under this constitutional provision for it, there is no excuse for it. Twenty years ago there may have been, before the day of the automobile, and before the day of the improved highway, but there is no reason for it to-day, and if the farmer resident in the small town is put to a little inconvenience to travel a mile or two to appear on the day of registration he would not be making one-fifth of the contribution that we in the cities have to make to insure the purity of the ballot box, where you are obliged to tell your mother's maiden name and where you worked last year and who you worked for the year before last, and where the place of your former employer was, and what was the color of your eyes and what distinguishing marks have you and how long do you expect to live in your present residence. Now we submit to all of this in the cities because the argument has been made to us that as good citizens we should make our contribution to the ballot with the full appreciation that upon an honest vote rests the very foundation stone that supports the government. But the farmer is unwilling to make that contribution. He wants to be carried along from year to year, with all his help and everybody around the place and then there are eligible to vote, eligible on election day to vote, according to the lists, men who do not reside in the county — I think I am modest in that and careful about what I say about my countryman friend, when I just say that there exists the temptation; it may never be taken advantage of, but it exists, and there is no reason why it should. This article would be complete by simply saying that all electors shall be registered upon personal application unless otherwise provided by law, and the Adirondack towns and the towns that are far away from the centers of civilization can well be cared for by special acts of the Legislature and this exemption from registration should not be given by the Constitution to all the towns and villages under 5,000 in population.

Mr. C. A. Webber — Mr. Chairman, I agree with Mr. Lincoln that there is desirability of not deciding this question upon vocational lines. I think that it ought to be decided, if possible, upon the broadest lines and that everybody who for any reason is compelled to be absent ought to have an opportunity to register without personal presence, providing it can be done without offending our desire to prevent fraud. Now, I think that that can be done very easily and very simply by the amendment that I offer. I provide in this amendment in the first place that it may apply to

anybody, the only requirement being that he shall be absent. Now, if a person is absent, I think that it is the hardest thing in the world for him to comply with the law in filing proof. Certain facts of proof would be required under the proposal that is made, that must be filed during his absence. I think that is one of the vital defects in the proposals so far made. Proof you do require. Proof you ought to have. But the proof ought to come when the man is at home and at the time he goes to present his vote. All that you require in registration, so far as requiring personal presence is concerned, is for the purpose of preventing fraud. Now, a man has voted at the last election and he has not changed his place of residence. If he desired to vote at the next election, there ought not to be any great question as to fraud. Now my provision is this, that a man who has voted at the last election and who has not changed his place of residence, may register at the following election by simply filing a written request to be registered without personal appearance, and that when he comes to vote on election day, then he presents personally the proofs that are required by law, whatever they may be. Now, in a way you have his name on the registration list; you have the opportunity to investigate and to see whether he still lives at the residence he gave a year ago, and you have the opportunity when he comes personally forward to examine the proofs as to his reason for not registering personally, and everybody has the least inconvenience possible, and I propose as an amendment, therefore, that after the word "therein", in line 2, strike out the rest of that sentence down to the word "required" in line 7, and insert in place thereof, the following: "of an elector." It would read, "but provision may be made for registration therein of an elector who voted at the last preceding general election and who has not changed his residence, by such elector filing with the proper registry officers on or before the last day of registration a written request to be registered and presenting before he votes prescribed proof as required by law of his inability to register personally owing to his absence from the county of his residence on the several days of registration." That I think will give you a general law that is not open to the objection that vocational selections are open to, and that is not open to the objection on the ground of fraud, it is not open to objection on the ground that it opens the door to everybody. Nobody is going to attempt to do this thing and go to the trouble of presenting proofs on election day unless there is real necessity for doing so, and I think in every way it is desirable. It is a very important matter, however. I don't think that such a change as this or any of those proposed here to-night ought to be adopted without being passed upon by the Committee and to see that they are correct at least as to language, but I think I have pointed out

a way to meet the entire difficulty, and without objection, as far as I can see.

Mr. Leggett — Why would not your scheme apply to all voters who voted in that election district at the preceding general election, not merely to those who must be absent on registration day, but to all? Where would be the danger of any fraud?

Mr. C. A. Webber. — Well, it requires investigation in other districts as to whether they did vote and where they voted from. The cases will be quite exceptional where the voters have changed their residence. They are comparatively few in number.

Mr. Leggett — I don't think you understand my question. Why would not your scheme apply equally to voters who are not absent on election day? Why should not they have the opportunity, if they have voted there before, to file a written application from the same district where they voted before?

Mr. C. A. Webber — I don't see any particular objection to that except that there seems to be a general sentiment against it.

Mr. Leggett — Well, that would apply to people who are sick and unable to appear before. They might not be absent, they might be present in the district.

Mr. C. A. Webber — I have no objection to that.

Mr. Leggett — Do you see any objection to it?

Mr. A. E. Smith — I would say, Mr. Chairman, that my Proposed Amendment would take care of Mr. Leggett's case.

Mr. Steinbrink — Mr. Chairman, two weeks ago to-night the principle involved here was rather fully discussed. Mr. Smith has offered an amendment and I say that, although I, too, come from the city of New York, I hope that amendment will not prevail, because, of course, it means just this, that every elector in the State would be subject to personal registration regardless of whether he lived one block, a half mile, or twenty miles, from the polling place. And I must differ with my brother Smith, although I know that is dangerous, in saying that, after all, in election matters there is just a little more fraud at times on the sin-cussed shores of New York than on the sun-kissed shores of the St. Lawrence, and that that has been evidenced, unfortunately, too many times.

Mr. A. E. Smith — Where were the most convictions in the last two years, in St. Lawrence or New York county?

Mr. Steinbrink — We need not go back two years, Mr. Smith.

Mr. A. E. Smith — I took a short period.

Mr. Steinbrink — I will make it still shorter; when this Constitutional Convention was called into being, it was by a vote highly suspicious which in one district resulted in twenty-two indictments and twenty-two pleas of guilty.

Mr. A. E. Smith — Won't the gentleman look into the Colton case up in St. Lawrence county?

Mr. Steinbrink — I will do that.

Mr. A. E. Smith — That is within a year.

Mr. Steinbrink — I did not go back that far.

Now, Mr. Chairman, the proposal which has come from the Suffrage Committee, and which I doubt not has had their earnest consideration, it seems to me provides within it practically all that was in the five proposals as a result of which General Order No. 18 was reported. Those were the proposals of Mr. Nixon, Mr. Wiggins, in part the proposal of Mr. Smith, Mr. Mann, and my own, and while I can see no serious objection to the suggestion made by Mr. Lincoln, there is this to be said, and that is that the amendment of Mr. Lincoln would permit the registration of an elector who was accidentally absent on registration day, or who was confined to his home on registration day with illness, and I am not altogether satisfied that it is wise to open the door to registration under those conditions. If, however, this Convention deems it wise, so far as the commercial travelers are concerned, for whom primarily I spoke two weeks ago, it would be entirely acceptable to me in the other form. I approve of it.

Mr. Clinton — This proposed amendment does not take care of those who, by reason of physical disability, illness or otherwise, cannot be present for their personal registration. You say the door is opened?

Mr. Steinbrink — Perhaps you misunderstood me, Judge Clinton. I said Mr. Lincoln's amendment opened the door for the registration of the elector who was accidentally absent on registration day, or confined to his home ill.

Mr. Clinton — Confined to his home ill. You say that opens the door to fraud. Why does not this open the door to fraud?

Mr. Steinbrink — No, I didn't say it opened the door to fraud, but to the registration of that class, and it was for the Convention to say whether they desired to go that far.

Mr. Clinton — I understand you to say that that was an objection to Mr. Lincoln's proposal.

Mr. Steinbrink — It was not an objection on my part; merely the statement of a fact.

Mr. Clinton — It seems to me that it is one of the peculiar merits in Mr. Lincoln's bill. It cannot open the door if properly applied.

Mr. Steinbrink — I said, Mr. Clinton, so far as I was concerned, I approved of Mr. Lincoln's amendment.

Mr. Olcott — Mr. Chairman, I was only going to ask that Mr. Lincoln's proposal be read again.

Mr. Lincoln — Before it is read, may I make one correction in the statement which Mr. Steinbrink made, and that is that my amendment does not take care of one accidentally absent on the day of registration, as it provides that the persons who expect to be absent upon filing proper proof may be registered without personal appearance.

The Chairman — The Chair suggests that Mr. Lincoln's amendment be read for the information of the Committee.

The Secretary — Strike out on page 2, sentence in line 1, beginning "but provision" and ending in line 7 with the words "being required", and substitute therefor the following: "except that laws may be made providing that in such cities and villages voters may on the first day prescribed for registration be registered without personal application, on filing with the board of registry proof as required by law that they will not be able to register personally on any of the days prescribed for registration."

Mr. Westwood — Mr. Chairman, the members of this Convention who are aware of the struggle of the people of the State of New York to bring about the enactment of law by which voters must subject themselves to personal registration ought to look with a great deal of fear upon the enactment of this Proposed Constitutional Amendment into the fundamental law. Mr. Lincoln's proposal opens the door wide to fraud. There are many who do not believe in promissory oaths to be taken by those who assume the burdens of official office. All that his proposal, when it becomes analyzed, requires is that a man — any man — shall make an affidavit or provide other proof which cannot be of course stronger than an affidavit or testimony, that he expects he will be absent from his home. And I venture to say that every man eligible to vote in any one of the large cities of this State can conscientiously make an affidavit completely and fully to meet the situation, no matter how closely and accurately the Legislature act in enacting laws pursuant to this Constitutional permission. Now, I see just as great opportunity for fraud in the proposal offered by Mr. J. G. Saxe, which has been considered somewhat and redrafted, as he said, a number of times.

Mr. J. G. Saxe — I am glad to take the responsibility for this amendment, because I am absolutely and entirely satisfied with it; but I am not entitled to the credit for it. Six different measures were introduced and went to the Committee on Suffrage. The Committee on Suffrage did a great deal of work on it; the bill-drafting department did a great deal of work on it; and, possibly, if one individual more than another is entitled to the credit of the wording that now exists, it is Mr. Louis Marshall, who spent a number of hours trying to whip it into shape. And

while I am only too glad to accept the responsibility, I am not entitled to the credit.

Mr. Westwood — Now, under this proposal, Mr. Chairman, the voter who does not intend personally to register, must have a regular vocation or occupation — words which I had presumed to be synonymous — at least the vocation and a regular occupation are synonymous. But it is provided that the elector, if he can swear that, in the pursuit of a regular vocation, he will be absent may be registered. Look at two or three of the channels by which a fraud may be perpetrated, which have occurred to my mind in the last few moments. The lawyer whose office is within the business district of any one of the large cities of the State is a man with a regular vocation. But it is necessary for every lawyer occasionally to go without the county in which he registers. And if the lawyer desired to perpetrate a fraud or if others through him desired to perpetrate a fraud under this general plan, it is easy enough for the lawyer to make a truthful affidavit that in the pursuit of his —

Mr. J. G. Saxe — The criticism which the gentleman makes is perfectly correct as to any amendments that have been offered to this bill. It is not a correct criticism as to this proposed amendment, which provides that the Legislature must designate the classes and unless the Legislature, in an unwise designation, includes the lawyers, the point he makes will never arise.

Mr. A. E. Smith — I would like to ask the gentleman to try to find out from the Senator why he deemed it unwise on the part of the Legislature to extend this to lawyers.

Mr. Westwood — Now that our friends have had their amusement on the other side of the aisle, let me point out again that this opens the way for the Legislature to permit fraud to be perpetrated. Take another class than lawyers. Take a man in the plumbing business, whose regular vocation is plumbing. Ordinarily it might not take him outside of his county; but if his plumbing shop is near the river, it might be that he could truthfully swear that on the tenth day of next October he expected to do some plumbing in the county of Kings. A salesman — a salesman in a department store, a salesman anywhere, — could not be convicted of a crime for making an affidavit or offering oral proof that he intended, in the pursuit of his regular vocation, to be absent on all of the days of registration. The doctrine of personal registration ought to be too sacred to the voters of this State to permit anything to be done which will open wide the doors to fraud. I see in this proposition the lurking germs of permission granted to legislatures, in which we might not have that degree of confidence that they have inspired in recent years, to nullify all for

which the people of this State have struggled for years. The whole proposition ought to be defeated as one intensely dangerous, and ought to be examined with the utmost care before the majority of the members of this Convention gain the consent of their judgment to assent to the passage of this or any similar proposition.

Mr. Olcott — Mr. Chairman, I do not see the danger that is bespoken for this provision. In fact, it seems to me so innocent that I was, a few moments ago, feeling that perhaps Mr. Lincoln's proposition was not too broad. I had not considered that much when he first introduced it, and it seemed to me that it was in simple language and perhaps opened the door only for the rectification of a difficulty that should not be imposed upon anyone who happened to be away on registration day. Let me say in regard to that that my present consideration seems to lead me to believe that it is a little too broad and that there is not any special harm in the vocational requirements being specified before the Legislature can pass a bill for registration other than personal registration. If there be a regular vocational reason for a man necessarily being away, or expecting to be away, on all the days of registration, I do not see where great danger occurs. It might quite well be that in one or two instances a man might file proper proofs to the effect that he is going to be away, and necessarily going to be away on a registration date, and then find that, after all, he is not required to be away on one or all of the days. But he cannot, by reason of that fact, register twice, and he cannot commit any fraud because of that. He is not going to defraud the registry officers, it seems to me, by filing proofs that are not strictly correct and conscientious if in fact he can be present on any registration day because every one knows that the ordinary man, be he lay or professional — it is easier to attend the registration board personally than to file an affidavit. I suppose I draw as many affidavits in the course of the year as the average man or even the average lawyer of this Convention and yet I would not hesitate for the world to say that I would rather go across the street and register than draw an affidavit. And so, Mr. Chairman, so long as you have the vocational requirement that will sufficiently identify the man, plus the probable necessity of being away on all registration days, it will guarantee, from the fact that he goes to the trouble of making it, that the necessity is really and truly in his mind. I do believe that this amendment should be passed. I think that it will provide an enfranchisement for persons whose business necessity would otherwise deprive them of voting and I do not believe that there is sufficient possibility of fraud after the Legislature has regulated the details by its proper action to cause us to pause in giving that body permission to do that.

Mr. Green — This Proposed Amendment has traveled into a good deal wider circle than it began in. I thought the original intention was to give a compliment to our friends, the commercial ambassadors, and I can see that there would be some reason to that. Aside from its being special legislation, I would be the last one to raise a political war cry here, although I could understand why, if the Republicans became wicked and really wanted to do something, don't you know, they might hand it over to our Democratic friends by some special enactments that the Legislature had the power — I would not mistrust that Friend Smith and his party would do anything of that kind to Republicans.

But, Mr. Chairman, levity aside, I believe that a good deal of pains has been taken in the past to get these laws on registration, on primaries and on elections and the ballot as safe as they can be made. While I do think that I have seen some real inflictions of almost injustice upon the men who had always been Democrats or Republicans and always lived in the same voting district, and who because of severe illness could not register and hence could not vote; at the same time, if you try to do a thing fairly and broadly for all interests, you can hardly allow the door to be opened in any small way for fear that the animal might walk clear in if he got his nose in. Now I believe that we had better hesitate about this a bit and see where we are at. I think it is a bad amendment at the beginning. I think we should preserve the laws precisely as they are to-day, in the interests not only of the country folk, of which I am one, but of good government and the city folk down in big New York as well. I hope, therefore, Mr. Chairman, that the vote will be adverse to any proposition which opens the door to the possible chance of fraud.

Mr. Marshall — I trust that this amendment as proposed by the Committee will pass. If I felt that there was any likelihood that it would open the door for fraud I should strongly oppose it, just as I opposed the proposal of Mr. Lincoln, which I think does not maintain the proper safeguards. It merely requires that the person who seeks to be registered shall file with the Board of Registry the proof required by law that he will not be able to register personally. That is so broad that it is difficult to imagine a single case which might not come within it, how a man might file such an affidavit for reasons of convenience and not of necessity. The provision as drafted by the Committee requires certain conditions to be complied with in order to make it applicable. First, it applies to an elector who has necessary duties outside the county which prevent him from being present and registering personally. Second, his duties must be such that, in pursuit of his regular vocation or occupation, he is absent from the county. Third, the

class of electors who are to be entitled to this right must be designated and defined. That avoids the necessity, or rather the incongruity, of creating classes in the Constitution, such as commercial travelers, actors, railroad men and the like. Those classes may not be sufficiently comprehensive, or they may be too extensive, and therefore it should be left for definition and designation. Fourth, it provides that necessary duties performed in the pursuit of a regular vocation or occupation, which is designated and defined, will occasion the absence of the voter during the several meetings of the registry officers. And, fifth, it requires proper proof by the elector of these jurisdictional facts. They must consist of the necessity, either in pursuit of a regular occupation which we have there in the case, or designated and defined, that will occasion the absence of the individual of that class from the county during the several meetings of the board of registry. Now there we have protective provisions which prevent fraud, which make it possible to require definite proof and which will not enable a man to register by merely stating that he will not be able to register personally.

Mr. Parsons — Under this provision reported by the Committee, will it be possible, constitutional, by statute, to require from those who wish to register in this way proof as to their rights to vote other than those proofs required of those who register personally, except the facts as to their necessary duties and their pursuit of a regular vocation.

Mr. Marshall — I understand your point. In other words, as I understand it, a man must be a qualified voter any way; and possibly, in addition to the proof of his qualifications, he must give proper proof of these exceptionable facts and circumstances which prevent his personally appearing before the Board of Registry to register. Let me, Mr. Parsons, call your attention in connection with that fact, to the introductory words of Section 4: "Laws shall be made for the regulation of elections and for ascertaining by proper proofs, the electors who shall be entitled to the right of suffrage hereby established". That should be read in conjunction with the other provisions. Could you say, for instance, that a person who is to be absent, an elector, on registration days and who therefore wishes to register under this provision, must have his thumb-prints taken, whereas a person who is to register personally would not be required to do that? The Legislature can, for the purposes of protection, require any proof which they think is proper in order to establish the jurisdictional facts here indicated; and if they think that thumb-prints are necessary, I haven't any doubt that they can require thumb-prints.

Mr. Parsons — What I asked is whether they would require them as to this class and not require them as to the other.

Mr. Marshall — In view of the fact that the same language is used — proper proof — both in the initial sentence of Section 4 and also in this sentence which has been added, I haven't any doubt that it can require it in both instances. Your question is whether they can require it exclusively in the second instance and not in the other.

Mr. Parsons — May I call your attention, Mr. Marshall, to the fact that the proper proof which appears in line 7 on page 2 is limited to proper proof "of the foregoing facts", namely, the necessary duties outside the county and the pursuit of a regular vocation. Now the phrase "necessary duties outside of the county" is very elastically worded and I venture to say that it would be very difficult to convict any one of perjury in swearing that his duties took him outside of the county; so that your protection, if you are going to allow this, must come through the fact that the Legislature can require a great many other things, things which would not be required from a person registering personally, in order to make sure that fraud was not perpetrated and to catch the person perpetrating fraud, if fraud was perpetrated.

Mr. Marshall — I think they have the most ample power to require such proof as may be necessary for the purpose of protecting the public against fraud, and that proper proof may include — would necessarily include the making of an affidavit, I suppose, coupled with such other evidence as might be necessary, as, for instance, possibly the affidavit of an employer as to the necessity of a commercial traveler being absent in the pursuit of his regular vocation, or such other evidence as would establish these jurisdictional facts, and in addition to that, as I have already indicated, it would certainly be necessary also by proof to establish the qualification of the individual to be a voter, namely, that he is a citizen of the United States and is a resident in the State of New York for a year, in the county for four months and the election district for thirty days. Now as to the criticism that has been made that laws shall be made for such a purpose, without going into definitions, without here specifying who the individuals are, I call attention to the fact that in the matter of personal registration it is all left to laws under the jurisdiction of the Legislature to state who shall be eligible to the right of suffrage as established by the Constitution, that is, under the existing provision of the Constitution. This provision is much more stringent because it imposes upon the Legislature certain limitations, without compliance with which it would be impossible to have absentee registration, and it would seem that these protective provisions are

ample to take care of the interests of the public. Now, in connection with that, it will be noted that the registration must be completed, under this Proposed Amendment, not ten days before the general election, but fifteen days before, so that ample time is given all those who are interested in the holding of honest elections and in making proper investigations to ascertain whether or not, in addition to those who register personally, those who register under this absentee provision are men who should be permitted to register in that way. Now there is a reason, in justice, why it is proper that such a measure should be adopted. It is a very great hardship upon commercial travelers and other classes of voters to be required, if they want to vote, to expend a large amount of money, first, for the purpose of being present before the boards of registry in order to register personally, and secondly, after having registered, to return once more to their place of residence for the purpose of casting their votes. That is a hardship to which the ordinary voter is not subjected, and I certainly think that every effort should be made which is humanly possible to take care of these men, who, in their regular vocations are required to absent themselves from their places of residence in pursuit of their vocations and in the performance of the necessary duties of their vocations and occupations, and to enable them to register. Now it is proved by Mr. Steinbrink and others who have investigated the subject that there are at least sixty thousand commercial travelers who are disfranchised by reason of the existing laws, and if anything can be done to help them that should be done. The only thing we are interested in is whether this would be made the vehicle of fraud. Now I feel satisfied that with all the protective provisions that the Legislature can enact, and is required to enact, there would be very little opportunity for fraud, probably less than in case of a man who is required to appear personally, because you have in such an instance as this, the sworn proof which can be required as to these facts, with an opportunity to investigate the truthfulness of the statements which are made in compliance with the requirements.

Mr. Deyo — Mr. Chairman, I offer the following amendment, which I will ask the Clerk to read:

The Secretary — By Mr. Deyo: Amend by inserting in line 7, page 2, after the word "facts" the words "and of the further facts required by law to be stated by an elector making personal application for registration."

Mr. Deyo — I fully agree with what Mr. Marshall has said as to the power of the Legislature, but this amendment would require the Legislature to enact laws that would require the person making application to register without personal appearance, to

make proof of the identical facts which he would be compelled to state to the registry board in case he personally appeared for registration.

Mr. Marshall — Do not the words which you are seeking to insert duplicate the requirements which is now found in lines 3, 4 and 5 on page 1, and which are the present constitution: "Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established," and is not that a fact that the right of suffrage established by the Constitution is by virtue of the facts relating to the qualifications of the voter who applies for registration?

Mr. Deyo — I very much question it. Mr. Chairman, I also offer the following amendment which I do not care to discuss at the present time.

The Secretary — By Mr. Deyo: Amend by striking out, line 5, page 2, the words "to be designated and defined."

Mr. Leggett — This is a very important question, reversing the progress of legislation in this State, covering a number of years. There have been numerous amendments offered and I violate no confidences in saying that others will be offered. I notice the hour is away beyond the time mentioned in the rule. I therefore move that the Committee rise, report progress and ask leave to sit again.

Mr. J. L. O'Brian — This is the second whole evening we have spent on this subject. It seems to me that we will make more progress if we stay here another twenty minutes, and finally dispose of it one way or another than by adjourning. As one of the martyrs who was here on Friday evening when we adjourned fairly early, I witnessed the result. Every time we take an adjournment on one of these matters we begin at the beginning the next time it is taken up and go all over it again. Now, the subject is all before the Convention to-night. I have no personal desire one way or the other in the matter, except that I think it would be in the interest of progress and the accomplishment of results if we might stay here a short time and see whether we cannot finally dispose of this provision.

Mr. Leggett — If it was a matter of ten or twenty minutes, there would be no objection to staying here and finishing it — we would all be very glad to do that — but it will be a matter of three hours at least. There is too much in this thing for us to submit to a vote without a thorough discussion and there are a number of us who would like to submit some remarks and I judge from the number of gentlemen passing from the Chamber, that doubtless they are tired and feel that we have done a very good day's work to-day.

Mr. Westwood — Don't you think, Mr. Leggett, that there are many members of the Convention who might like some time to consider it?

Mr. Leggett — I certainly would like a little time, myself.

Mr. Dahm — Mr. Chairman, I sincerely hope that the proposition offered by Mr. O'Brian will not prevail. Men here came to this Convention at ten o'clock and they rose from their beds at six o'clock this morning in order to be here, and now some men come along this evening after we have been attending to business and working hard all day and they desire to stay all night. I don't propose to sit here twelve or fourteen hours a day, not for the State of New York. I move this Convention adjourn.

Mr. Mereness — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will please state his point of order.

Mr. Mereness — The motion to rise and ask leave to sit again is the previous question in the Committee of the Whole.

The Chairman — The question arises on the motion of Mr. Leggett.

Mr. J. G. Saxe — I wish to make an amendment, to wit, that this matter be taken up as a special order, after the budget. We have come in ahead of the budget by unanimous consent and I think it is only fair to Mr. Stimson that we should have this argument proceed after the budget.

Mr. Westwood — I raise the point of order that the proposition just pronounced by Mr. J. G. Saxe is out of order.

Mr. J. G. Saxe — Mr. Chairman, I will ask unanimous consent for it, because I do not want to interfere with Mr. Stimson.

The Chairman — The question arises on Mr. Leggett's motion that when the Committee rise it report progress and ask leave to sit again on the matter under discussion. Is there an amendment by Mr. Saxe, that the budget take precedence to-morrow, and that this matter go over until later?

Mr. Latson — I raise the point of order that that question must be dealt with by the Convention.

The Chairman — The point of order raised by Mr. Latson is well taken. The question arises upon the motion of Mr. Leggett.

Mr. Parsons — I suggest that if this motion prevails, then automatically this matter would come up after the budget, because it is still a Special Order bill after the budget.

Mr. Westwood — Mr. Chairman, is not that a question for the House to determine?

The Chairman — The question before the House is on the motion that the Committee do arise, and report progress on General Order No. 48 and ask leave to sit again. All those in favor

of the motion will please say Aye, contrary No. The motion is carried. (The President resumed the Chair.)

Mr. L. M. Martin — The Committee of the Whole has finished its deliberation and begs leave to submit the following report.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 761, and also Proposed Amendment No. 764, reported in favor of the passage of the same without amendment.

The President — The question is upon agreeing to the report of the Committee of the Whole. All in favor of agreeing to the report say Aye, contrary No. The Ayes have it, the report is agreed to and it goes to the order of third reading.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 769, also, Number 762, reported in favor of the passage of the same with amendments.

The President — The question is upon agreeing to the report of the Committee of the Whole. All in favor will say Aye, contrary No. The Ayes have it and the report is agreed to, and the amendments will go to the order of third reading.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 780, reported progress on the same and asked leave to sit again.

The President — The question is upon granting leave to sit again. All in favor say Aye, contrary No. The Ayes have it and leave is granted.

The President — The hour of half past ten having arrived, the Convention stands adjourned until ten o'clock to-morrow morning.

Whereupon, at 11:15 p. m., the Convention adjourned to meet at 10 a. m., Tuesday, August 10, 1915.

TUESDAY, AUGUST 10, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Mr. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Oh Lord, our God, Father of all men and Ruler of all nations, we commend to Thee in faith and love at this time all who shape public thought and mould public opinion and determine public policy. Grant unto them the gifts of wisdom and of vision, the graces of tact and of courage, so that they may think without confusion, clearly, and act from honest motives, purely, and so establish the weal of the land. Help us to realize that no wisdom availeth if Thou dost cease to

guide; that no courage helps if Thou dost cease to defend; that no strength is strong if Thy watchfulness and power do not uphold. So we pray that the counsels of the people may become the ministers of Thy truth and Thy righteousness and Thy justice unto those whom they lead, that all things in private and in public may be done in accordance with Thy great and holy will, so that purity and prosperity may crown our endeavors. For Thy Name's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal is approved as printed. Presentation of memorials and petitions.

Mr. Unger — I present three memorials signed by about 2,000 citizens asking that the same recognition of their valor, courage and bravery be given the Spanish War veterans as was accorded the Civil War veterans.

The President — The memorials will be referred to the Committee on Civil Service.

Mr. Austin — On behalf of Delegate Hinman of Albany, I offer the following memorial.

The President — The memorial introduced by Mr. Austin in behalf of Mr. Hinman will be referred to the Committee on Civil Service.

Mr. Burkan — Mr. President, on behalf of 800 residents of the Twentieth District, I present a memorial with respect to the civil service.

The President — The memorial produced by Mr. Burkan will be referred to the Committee on Civil Service.

Mr. Mandeville — Mr. President, I offer a memorial which I would like to have submitted to the same Committee.

The President — It will be so referred. Are there any further memorials? The Chair lays before the Convention a communication from the Amsterdam Chamber of Commerce which will be referred to the Committee on Cities; also a communication from the city of Dunkirk which will be referred to the Committee on Cities; also a communication from the common council of Johnstown, referred to the Committee on Education; also a communication from Mr. Vincent Jewett of Lawrence, Long Island, addressed to the Constitutional Convention, which will be referred to the Committee on Bill of Rights.

Mr. Brackett — I send to the desk a petition, or a remonstrance, rather, of the joint legislative board of the Brotherhood of Locomotive Engineers, Brotherhood of Firemen and Engine-men and Order of Railway Conductors and Brotherhood of Railway Trainmen of the State of New York protesting against the

short ballot and any other centralization of power in the gubernatorial office.

The President — Referred to the Committee on Governor and Other State Officers. Any further memorials or petitions? Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

The President — Reports of standing committees. Are there any reports from standing committees? Reports of select committees. Third reading. Unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole for the consideration of the special order of the day, General Order No. 46, Print No. 778. Will Mr. Marshall take the Chair? (Mr. Marshall takes the Chair.)

The Chairman — The Convention is now in Committee of the Whole for the consideration of General Order No. 46, by the Committee on Finance.

Mr. Stimson — Mr. Chairman, the special order arises upon an amendment proposed by the Committee on State Finances, No. 778, based upon a number of amendments that were referred to that Committee. In the amendment as it was submitted by the Convention to the printer the title enumerated the various amendments which had been referred to the Committee on this subject, but I see that the printer has overruled the Committee and has printed it as an amendment simply introduced by the Committee on Finance without giving credit to the number of gentlemen who had submitted careful treatises on this subject which this Committee was very glad to recognize and from each of whom it derived a great deal of assistance in the formulation of its amendment. The Committee has also submitted a report on the subject which is printed as Document No. 32. With the consent of the Convention I have been requested by the Committee to make a general statement with regard to the Proposed Amendment and this subject as a whole, and then after that I shall ask the consent of the Convention that the amendment be read paragraph by paragraph as printed, for the discussion under easier circumstances of the entire amendment. I think in that way it will be most easily discussed. While I am always glad to answer questions to the extent of my ability I think we will progress more rapidly if the members will reserve their questions until the end of my opening statement. I am very glad to be able to say that the Committee on Finance has in this matter, as in the other, reached its conclusions and submitted its amendment by a substantially unanimous vote — only one member dissenting — and I cannot speak with sufficient appreciation of the fair-mindedness

and the patience which that Committee has shown in its deliberations and the assistance which each and every member of the entire body have rendered in the entire discussion. Now, on last Thursday in the consideration of the debt-incurring power of the State, I presented the figures of the recent increase in debt in this State. I should like to call attention of the Convention today to the very rapid increase that has also taken place in the general running expenses of the government during the past thirty years. The figures are contained in this document, No. 32, which I hold in my hand, and they are very startling, for they represent an increase in running expenses during those thirty years of very nearly 600 per cent. The general expenses of the government of the State in 1885 were only a little over \$7,000,000. Those general expenses, excluding the interest on all debt and excluding everything except what may be properly attributed to the general running expenses of the State, have now mounted up to over \$42,000,000.

During that time the population has increased only 82 per cent. So that the increase in the running expenses of the State have tremendously outrun the population. They have also very greatly outrun the increase in the assessed valuations of the property of the State which are subject to taxation. During that period the assessed value has only risen from a little over \$3,000,000,000 to \$12,000,000,000, a percentage of 274 as against the 600 per cent. that I mentioned a little while ago, and this increase in the taxable property of the State is to a large extent artificial and does not represent a real increase of property, because if you all will remember, during that time there have been additions to the assessed valuations which do not represent increases in property. One of those was, for instance, the special franchise tax which at one step, according to my recollection, added nearly \$200,000,000 to the assessed value of property in the State and which since has greatly increased; a form of property which formerly was not assessed at all. And, in the same way, there have been increases in the rate of assessment in the different portions of the State, notably in the city of New York, where but twelve or thirteen years ago at one jump they raised the rate of assessment on real property from between 67 and 75 per cent. to very nearly 100 per cent. Until recently the State has not felt the strain which this increase in its running expenses might be expected to impose, largely because we have been running the State on indirect taxation. But there, again, we have about reached the limit in the possibilities of indirect taxation. An examination of the figures of indirect taxation shows that in the recent years it has fallen off rather than increased. It fell off nearly \$2,000,000 from 1913 to '14, and a year and a half ago the Governor of

the State in his annual message to the Legislature announced that, in his opinion, the limit of indirect taxation had been reached. So that the sum and substance of my proposition is that in this State our expenses of government have been increasing faster than the property out of which taxation can be raised — immensely faster; have been increasing tremendously faster than the population, and that, having reached the limit of indirect taxation we are confronted with the necessity, so far as we can see for an indefinite period in the future, of very severe additional direct taxation. When we turn to the other branches of the nation we find that a somewhat similar process has been going on. The Federal government during the similar period of thirty years has also increased its expenses very markedly, although not to quite such a great extent. Their increase represents only 400 per cent. and perhaps may in part be attributed to the better organization of the administrative branches of that government; but they have very markedly increased to an extent beyond the increase in population. And in the same way that same increase is to be noticed, or similar increases, in the other States of the Union, although hardly any of them show such a marked increase as New York State. I think it is fair to say that this State stands pre-eminent in the increase of the cost of government. For instance, the average throughout the United States is only — the average increase was only 105 per cent. during the period during which New York State raised over 200 per cent. And during that same period the expenses of the Middle Atlantic division — during the ten years between 1903 and 1913, the Middle Atlantic division rose only 106 per cent., as a whole, as against New York's 200 per cent.

Now we find a great many people who, in the face of that problem, say that the thing to do is to stop the increases and the activity of government, out of which to a large extent this increase certainly has come. But, gentlemen, a very slight reflection will show that that is a chimera; it is an iridescent dream. The increasing demand for the increasing activities of government arises out of factors that are not within our control. It arises out of the fact that our methods of life are growing more complicated; that our methods of business are more complex, more varied, and, above all that, our population is steadily growing more and more dense, and each of those advances in what we call civilization means a necessarily increasing demand upon government to increase its activities and to do more and more of those things which require money for their performance. When men lived in such sparsely settled communities as the people of this country did a hundred years ago, they did not elbow each other very much.

They did not need much government. But as the population grew faster and faster, as the great cities grew up, as new inventions came in, more and more demands upon law were necessarily asked. The introduction of railroads makes necessary a railroad law; the introduction of systems of banking, a banking law; trust companies, a trust company law; of the various public utilities, public utilities law; and so on *ad infinitum*. And, in short, we have no right to suppose that this constant pressure upon government to do more and more will have any slackening whatever. On the contrary, if we face the problem fairly, we must say to ourselves that in all probability that demand will increase rather than diminish. Now, that being so, America being merely at the threshold of her problem, what is the necessary and prudent thing for the people to do in order to diminish the risks of the dangers that come with that situation? If at this threshold we have, as these figures would indicate, and as the protest which has come during the past year against proposed measures of taxation in this State would indicate — if, in other words, we have even at this threshold reached what would seem to be the limit of reasonable taxation, why, the only other thing to do is what every good business man does — to look around and try to stop the avenues of waste; to look around and see where our methods of cost have been defective. All of you who are business men know that the difference between a successful and failing business does not depend so much on the size of the sales and the profits as it does on the cutting off of the costs, the cutting down of the costs to the lowest possible figure. Now, when we look around to find out what can be done in that way in this country we do not have to look far to find a difference in our methods, not only from those of other successful businesses, but from those of almost any successful government in the world. The same problem exists throughout the whole country. We are the only nation, so far as I have been able to find out, which is without that first instrument of successful business, an accurate budget system. A budget system is simply a system of planning for your revenue and your disbursements. It is simply a method of trying to adapt the one to the other in order that there may be a correlation between them. Now, I have had a good many of my friends here in the Convention ask me how it was that I came to be interested in finance. I certainly frankly and freely admitted that it was not from any original knowledge of the subject or any special aptitude for the subject, but four years ago the duty was suddenly imposed upon me of being responsible for the efficiency of the great arm of defense of this country, the United States Army, and it did not take very many months of study for me to find out that the real

fundamental thing which prevented us from having an efficient army was, more than any other factor, the fact that we had no budget system by which the taxes which this country was paying for its army should be with forethought and foresight and prudence applied to getting an army. In other words, the fundamental defect of our national system in that respect, as in all other departments requiring efficiency, was the fact that we did not have any budget, any army budget. And although we were spending within measurable distance — as I recollect the figures, more than half as much annually as Germany was spending upon her army, and as France was spending upon her army, the money which we spent, from our own shiftless unbusiness-like methods, was being wasted in a thousand ways, so that as a result of it all, after this immense expenditure we had no army competent to perform the duty which an army should perform.

The man who was responsible for the efficiency of the army, in other words, had nothing to do with the making of the budget; he had nothing to say about it. It was made up by other people who had no control over the army and the money which secretary after secretary had recommended should be spent in certain directions upon that great work was being wasted on unnecessary army posts in various districts of the country where they could be of more political benefit than of benefit to the national defense. I found the same thing extended into every branch of the country's activities. I have read the record in the Congressional Record in regard to the navy where the chairman of the Naval Committee in the Senate when he was asked why it was that certain of the navy yards, of which we have a great number which nobody outside of that Committee see any use for — how it was that these navy yards were not adequate to take a modern battleship, and this learned Senator at once responded that it was true but that was the reason why he was in favor of smaller ships. That is on the Congressional Record. Now that whole thing I found running into our national system wherever it went. On looking through my reading I find that thirty years ago this fact was commented upon by the most thoughtful student of our affairs from outside who has ever written upon them, Mr. Bryce, in his "American Commonwealth." He put it in this trenchant way, speaking upon our lack of a budget system, and this was nearly thirty years ago: "A thoughtful American publicist remarks: 'So long as the debit side of the national account is managed by one set of men, and the credit side by another set, both sets working separately and in secret without public responsibility and without intervention on the part of the executive official who is nominally responsible; so long as these sets being composed largely

of new men every two years give no attention to business, except when Congress is in session, and thus spend in preparing plans the whole time which ought to be spent in public discussion of plans already matured, so that an immense budget is rushed through without discussion in a week or ten days — just so long the finances will go from bad to worse, no matter by what name you call the party in power. No other nation on earth attempts such a thing or could attempt it without soon coming to grief, our salvation thus far consisting in an enormous income with practically no drain for military expenditures.’”

And Mr. Bryce goes on with his own statement after this quotation: “Under the system of congressional finance here described America wastes millions annually. But here wealth is so great, here revenue so elastic, that she is not sensible of the loss. She has the glorious privilege of youth, the privilege of committing errors without suffering from their consequence.” Now I commend to the attention of the Convention those words written nearly thirty years ago and I ask that they be contrasted with these figures that we have collected and which I have just pointed out and which strongly indicate that that glorious period of youth is now over, so far as our finances and taxation are concerned, and that this country is reaching a period when it has got to take a little thought about its stomach or it will suffer the consequences which other mature organizations will suffer. That is the problem which your Committee found before it when it approached the consideration of the situation here in this State and of which I will now try to present to you our analysis and our recommendation. We found that the situation here was precisely like that which I have just described as being true of the national government. We were wholly without a budget system, and the methods by which our appropriations were annually made up did not differ in any essential particulars from those by which the national appropriations were also made up. Of course, the analysis and the consideration involved a careful criticism of modern legislative methods in this State, and I want to in the very beginning again allude to the fairmindedness which the members of the Committee, whose main or entire experience had been in the legislative branch of the government, showed in their work and analysis of this situation. There were four such members on the Committee and three of them have united in this report. Of course any such criticisms as I may touch upon and in those which the Committee examined, there was no thought whatever of any criticism upon any person. I think any such criticism would be neither deserved nor useful. The criticism is aimed at the method and I think it is the firm belief of all of us who went through that examination that under

the methods which we found it would be impossible for any representative body of men to reach other results. It is not a question of better men, it is a question of better methods. I would like to say further that the conclusions which we reached were reached only after very long and careful consideration, the compromise of different views and of attention to the matters which were presented by the men of those different views; but when finally reached the amendment which the Committee produced I think can be said to represent a carefully matured plan of harmonious character in which every part is dependent upon every other part and where each such part was arrived at only after the best consideration that we could give it. Now, first, what was the situation in general — what is our analysis of the present evil? Well, in a word, the main criticism that I think the Committee would make, and which underlies the whole matter, is that there has been a shifting of functions, so to speak, a sliding backward of the things that the different branches of the State government ought to do, until the duty which the executive ought to do, in the first place having been neglected by the executive, has been gradually allowed to slide over into the Legislature, where in turn it has so congested the functions of that body that it has forced along the real legislative function that the Legislature ought to perform still further, one step back under the executive again. It has been a gradual sliding back of duty one step further back until the whole — the performance of the whole function has been set out of joint, disintegrated, and, in a word, the remedy which your Committee suggests is not to add more restrictions or more duties upon the tail of the performance, but to try to shove the whole performance back to the situation where it normally should be, and begin over again there.

Like the old nursery rhyme: Fire, fire, burn stick; stick, stick, beat dog; dog, dog, catch cat. The remedy is not to make the cat more catchable by cutting off a leg of the cat, but to go back to the beginning and set your fire under the stick in time. Now, in general, what is that? Well, the situation which we found is this, going back to the very beginning. Under the Laws of 1910 the estimates for the coming year of the amounts which the State is supposed to need for the next year are supposed to be submitted to the Comptroller by the different departments and bureaus and officers who make up these estimates. The duty, I should say, in the beginning, of making a plan or estimate of the next year's work is an administrative duty, as any one of you can see on a moment's reflection. If any of you belong to a board of directors of a business corporation and went to your annual meeting where you were to decide finally upon the amount of money that you were going to

allow or to authorize to be spent in the business for the next year, I think you would feel very much abused, if, when you got there, the executive or administrative officers of that corporation, the general manager, or the president, had not prepared beforehand a careful plan of what they thought those estimates ought to be. I think you would feel very much abused if you were asked to sit down in the board room and without any other knowledge than what you had as director to hammer out with pencil and paper such a plan. You would think that the executive was not doing his business if he did not give you that much help, if he did not come in with a carefully formulated program which he laid before you and asked you to decide. I think you would regard that as his duty and not yours. The decision would be yours. It would be for you to say whether or not you thought the plan was a good one; whether or not you thought he was asking for too much money; whether or not you thought he had carefully gone over the subject to propose what his experience in the line of the activity of the corporation ought to be. Well, that is just what we have got in the State government. These estimates when they come from the different departments of the government, and there are 152 of those, go to the Comptroller and by him are shovelled into the Legislature. He has no power to reduce them. He has no power to see whether those estimates bear any relation to the amount of revenue which the State is going to have. He has no power to work out a program. He is simply a transmitting agency to hand this over to the Legislature.

And under those circumstances the only thing that is left is for the Legislature receiving this mass of estimates to sit down and itself hammer out a plan. Well now there are just two or three things to be said right there. It hardly takes a word to point out the necessity of such revisional planning. Every bureau officer,—and that is a trait of human nature in general,—every officer who is in charge of a commission or post, if he is any good at all, thinks that that post or that commission is the most important thing in the government, naturally, and he draws his estimates accordingly, when there is no restriction put upon it and the result is that when these go into the Legislature they are so high, as has been brought out by the unanimous testimony of all who appeared before your Committee, from the Comptroller's representative to the members of the Legislature, those estimates are so high and bear so absolutely no relation to the revenue, that the only thing to do is to disregard the aggregate altogether. They are treated as mere requests made on the haggling principle of a man who asks for more than he is going to get or expects to get. There is no responsibility at all about them. That is the situation which of

course makes it necessary for the work of planning a program to be done afterward in the Legislature. Well now there are several reasons why the Legislature is even less fitted than the average board of directors to take up such a duty. In the first place, the Legislature, the members of the Legislature, each represents a separate district. Their viewpoint is of that district, not of the State as a whole as is necessary under our system. Any plan which they make up is like the plan of the expenses of the army that I spoke about a little while ago. No matter how conscientious, how sincere the effort to get away from the local viewpoint, it necessarily exists and will exist so long as the member of the Legislature is and continues to be the attorney of his district. And any plan which is made up in the Legislature necessarily, to a greater or less extent, partakes of that spirit of mutual accommodation between the districts which has grown so common in our American public life that it has been given those rather unpleasant names of "log-rolling" and "the pork-barrel." It is no criticism upon individuals at all. If you thrust that administrative duty upon that legislative body of making a plan for the whole State, that result will continue to be arrived at so long as men are men and so long as legislatures are legislatures. Then, in the next place, the fact — and this is the point which Mr. Bryce pointed out in the paragraph that I read to you — the fact that this duty of putting together a program, this administrative duty of making a proposition, if dumped over on to the Legislature necessarily crowds out the time and the function, which is a purely legislative function, of criticising and disposing of such a plan when it is presented. As Mr. Bryce pointed out in that excerpt, we spend so much of our time in formulating this plan inside the Legislature that after it is formulated we have not got sufficient time to publicly discuss it. You all know how true that criticism is. How much time was there left for public discussion of the appropriation bill last spring when it was reported in its final form in the early hours of the same Sunday morning in which it was passed? Of course there had been committee work before, faithful committee work, but that bill was not completed until within a few hours or a few minutes before it was passed.

And it never was printed in its final form. And, as I am told, as you have heard here in debate, during the past twenty-one years there has never been but one year when such an appropriation bill was printed. Well, now, in a situation like that, how much publicity are you going to have for the debate upon the most vital question which can come before any self-governing Commonwealth? How much time are you going to have to debate the question of whether or not the State will grant the \$60,000,000

that we are going to have to pay for the next annual expenditures? And what help can the representatives in this body get — what help can they get from their constituents on that subject, in the shape of a carefully framed public opinion? Well, now, that is the situation to which this failure of the executive to present to the Legislature in seasonable time the matured program for discussion has brought down our legislative procedure. And what has been the next result? Why, the next result has been that the necessarily inevitable results of that system in the shape of the kind of appropriation bill that it necessarily turns out has turned over to the executive the real legislative duty of saying how much money we will appropriate next year. In other words this process has necessarily resulted in such appropriation bills that it has been made necessary that we should develop, not only in this State, but in thirty-five other States of the Union, a system of allowing the executive to take his hatchet and prune off these appropriation bills when they come out by the use of the executive veto. Well, now, people talk about our recommendations in this Committee being an attempt to restrict legislative powers, but look what the Legislature has done itself and what the people here have done already in the way of restricting legislative powers. That is where the abuses come. Why, we turn over the most sacred function of the State, the one which our ancestors fought for centuries to get, the hold of the purse string which is involved in the final decision of how much money shall be given; we have turned that over to the Governor and all of you know how it is. Every year there are appropriation bills passed which contain millions of money which the Legislature have allowed to pass, not because they thought they were necessary or proper, but because they relied upon the Governor to cut them out. In other words, our proposition has come down to this situation that instead of having the man who is to spend the money of the State come to the men who are to furnish that money and ask them how much they will give him — we have come to the situation where the men who are to furnish the money virtually draw their blank check and give it to the man who is to spend it and leave it to him to say how much of it he will take. Now, that is a surrender of real legislative powers to an extent which I, for one, think is well-nigh ruinous to a proper sense of legislative dignity and legislative powers. That situation, too, has come about from our failure in this State to adopt the precaution that every other successful parliamentary body in any English-speaking country that I know of has adopted. Owing to the spirit of mutual accommodation which necessarily exists and always will exist in every legislative body everywhere in every language where men sit in a room as we have been sitting here for

these last months, those parliamentary bodies which have been successful and which have met the great problem of free republics, namely, the problem of checking extravagance, and have met it most adequately, all of those bodies have arrived at a common means for doing it, which our Legislatures have not arrived at, owing to our use of the executive veto. That is, instead of turning it over to an outside executive officer to decide how much of this money shall be used, these other institutions and other countries have put a self-denying ordinance upon themselves. They have recognized that necessary spirit of mutual accommodation and they have all said this: That after a program is made up, whether it be inside or outside of the Legislature, after a program has been once made up, in order to make sure that that program receives criticism on its merits, and that a number of friends on the floor who may desire appropriations favorable to their district which are not important to the State as a whole may not combine to get them, all of these parliamentary bodies have placed restrictions upon themselves against increasing this program, with a common end.

It is no new idea. It was first adopted 200 years ago in the House of Commons and it has been followed in every other English-speaking country except our own. It has been adopted in all the cities of this State; all of the larger cities have it. The other day I received a very interesting contribution from Mr. Seitz, the editor of *The World*, who has been following our work here with considerable interest, apparently, which I am going to call to your attention. I remember when President Lowell of Harvard was here he called attention to the fact that the town meetings of this country have had a system which was very similar to the budget system which we were discussing and which this amendment represents. Well, the other day Mr. Seitz sent me the charter of the town of Greenwich, Conn. You will remember that the town meeting was preserved in the State of Connecticut rather longer than in almost any other State. I found in this charter a system which is so similar to a true budget system that I call it to the attention of this body. There the town, not having any single head, has a board which first proposes the plan of expenditures for the coming year. It goes through very much the same steps which I am going to point out that we have recommended in our amendment, in the shape of holding hearings upon this plan. And then, finally, after it has had hearings on the estimates which have been submitted to it, after it has revised those estimates and cut them down into a plan of procedure, it files them with the annual town meeting. And there is a situation where we find that the town meeting, composed not of a despised board of aldermen or a legislature or any other body of

representatives but of the electors themselves, holding the final repository of power, has put upon itself just this same restriction against raising the plan which I have spoken to you of as being common to practically all other English-speaking countries. Here is the way the present charter reads: "The board of estimate and taxation shall submit such estimate so fixed"—this is after they have been revised and the plan made—"to the annual town meeting, or the adjournment of such meeting, at a certain time. Each meeting shall have the power to decrease the appropriations or any item thereof, so estimated and fixed by said board, but in no event shall said meeting have the power to increase said appropriation or any item thereof, except at the affirmative vote of at least three-fourths of the legal voters present and voting."

Mr. D. Nicoll — What is the date of that?

Mr. Stimson — This charter is in the Laws of 1909, of the General Assembly of the State of Connecticut. So that when any of you are asked to believe that such a restriction is a restraint upon the natural power of anybody, representatives or others, I ask you to remember this fact: That the most peculiar American body that has ever existed in this country, the American town meeting, has chosen to place just such a restriction upon its own members, out of that abundant prudence of knowledge of human nature that every wise public government must eventually rest its success upon. Now, in other words, there is the sum and substance of the criticisms which your Committee had to make in regard to the present way in which the government is administered. It found that, in the first place, the executive department wholly failed to make any plan for the future year which was fit for presentation to the Legislature and upon which it might ask the Legislature's action and decision. In the second place, it found that this duty of making such a plan having been, perforce, placed on the Legislature, it had crowded out of the activities of that body the real legislative duty of deciding how much money should be spent for that coming year. And, thirdly, that that duty which has to be performed by some one had by the evolution of this policy of slackness been finally passed along and assumed by the executive. Now, taking up our recommendations which are contained in this amendment, No. 778, I will run through them rather briefly and point out what they propose. Now, in the first place we begin, as I said, at the very beginning; the cardinal principle being to try to introduce a greater sense of responsibility for planning this work of getting together an estimate for each coming year. We began away back in the beginning, not in the Governor, but in the various departments, which

are the ultimate spenders of that money, in order to try to check the present irresponsible feeling which makes it possible for the subordinate to send in his estimates, without any restriction upon it except his own enthusiasm. Several suggestions were presented to our Committee. Governor Glynn appeared before us, a man whose experience as Comptroller, and subsequently as Governor, combined with his natural ability, makes any suggestion of great weight. He strongly recommended a series of steps to be taken in regard to this, of which the Committee adopted what it thinks is the most essential and the one which would be the most successful. The amendment proposes that the heads of the departments shall submit to the Governor itemized estimates of appropriations and here is the vital point,—classified according to their relative importance. Now, Governor Glynn suggested that they be sworn to. He suggested that they be divided into an estimate of the things which were necessary, the things that were desirable, and the things that were contingent, and then sworn to, all with the same aim of bringing about a sense of responsibility. It was the opinion of your Committee that the oath of such an officer as to a matter which necessarily must be one of opinion would not add to his formal statement, provided he was required to present that classified in the order of their relative importance.

I remember, if I may allude to a personal incident that came under my own experience, when Mr. Taft was trying to introduce the budget system at Washington, and was requesting the heads of his departments to assist him in that respect, we had there precisely the same situation as exists in this State. The different subordinates there, just as they do here, send in their estimates without any revision to the Legislature; but send them in through the Secretary of the Treasury just as they are sent in here to the Comptroller, and the Secretary of the Treasury has no power to revise them, and none is exercised by anybody under the routine. Well, when Mr. Taft asked us to try to help him modify that situation, the first step which I found necessary was to try to take these heterogeneous estimates which came in from the different bureaus and to decide which were most important. I knew they were going to be cut down; they were a great deal more than any Congress would grant, necessarily, as they came in, and yet I had no power under any statute to cut them down myself. So, there were, I think, eleven bureaus in all, and I issued an order that each bureau should make up its estimates in the order of the importance which the bureau head thought they stood in relation to each other and not to send them in until they had placed them in that order. Then when those ten estimates came in I called on the general staff, which is the central body of the department, for

help, and I said, you take those ten estimates, which were necessarily conflicting in a good many respects, and you arrange them into one estimate so that you have got on one sheet of paper every one of the items that are on those ten sheets and so that they are there arranged in the order which you, as a central body of the War Department, think is the most important relative order in the interest of the government; and then when any one of those bureaus disagrees with you and you have an issue over it, bring that issue up to me for decision. Well, it took about a week's work, but after a constant hammering back and forth we finally produced in that way a rudimentary budget which represented the best views of the Department as a whole of the relative importance of a proposed expenditure of about a hundred million dollars, and it was arranged in such a way that when I took it over to the Committee of Congress I could say to them, "Gentlemen, here are the estimates for this year and if you are going to do any pruning on these estimates, as you undoubtedly are, the view of the Department is that the interests of the government will be best served if you cut off the lower ones rather than the top." Well, now, that is what this amendment proposes shall be done by the estimates by the heads of the departments before they come to the Governor. Necessarily that process will be very much facilitated if this Convention adopts the classification of those 152 boards and bureaus into which the present activities of the State are divided, so that there will be some departmental supervision over all those activities. The platforms of both of the great parties have recommended the adoption of such a system. The platforms of both of the great parties have recommended that these different activities be grouped into a limited number of departments, similar, assumably, to that which exists in the Federal system. I simply point out now that this amendment in speaking of the head of each department assumes that that pledge of the two parties will, to some extent, be carried out, and that instead of having 152 boards, officers and departments throughout the State when this budget system goes into effect we will have a certain number of departments under which these 152 activities are grouped. But if that should not be adopted it will be perfectly simple to change the word "department" into the characteristic language which would cover the present 152 branches. It would simply mean that the process of integration, so to speak, of systematization, will be thrown more upon the central revising authority and less upon the earlier departments, and the amendment here can be amended by the insertion of three additional words.

Now, to pass along to the next subject, the amendment provides that after these estimates have been so classified by the department heads according to their relative merit, they shall be, on or before

the 15th of November, submitted to the Governor. It also provides that the Governor after public hearing thereon at which he may require the attendance of the heads of departments and their subordinates, shall revise such estimates according to his judgment. Now, as the Convention will see, this constitutes as the ultimate revising authority of these estimates and the framer of the budget the Governor of the State. Your Committee spent a great deal of thought and time upon the question of who that revising authority should be. I confess, myself, that I for a long time had reserved judgment upon it, trying to ascertain what would be the best solution for a difficulty as to which a number of suggestions have been made. But after hearings and the testimony and the investigations which we have made had been fully completed and all sides had been heard and for the first time the matter was discussed in the Committee, we found that by an overwhelming majority the Committee had reached the conclusion that in order to produce the results which this whole system is trying to accomplish, of economy in our system of government, that power of revision must be centralized and concentrated not in any board but in the head of the State. Now, what are the reasons that lead to that conclusion? Well, you will see, if you read the facts of our taxation and our figures as we read them, that for many years to come the question of the cost of the government and how to pay it is going to be a burning question in this State. You will see that, just as happened this year, there will be for a long time, so far as we can see, the necessity for the imposition of a heavy direct tax upon the people of this State, and the man who lives out on the farm or in the city, and who is going to be face to face with the duty of paying that tax, is going to scrutinize pretty sharply the proposer of any plan for the expenditures of the State for the coming year. And if you want to have that scrutiny effective, you have got to place on some man's shoulders the responsibility of the formulation of that plan which will carry with it the imposition of the tax upon every citizen taxpayer of the State. And if you want to have that tax kept down and reduced, you have got to make some man in this State feel that when he is drawing up the budget, if he raises the proposition, every taxpayer will know it and will visit upon him the consequences.

Now, the minute you have a board to divide up and diffuse that feeling; the minute you have a board the taxpayer cannot put his finger on any individual in that board and say, this is the man, you won't have your economy. It was the opinion of your Committee that it required just that personal sense of responsibility in the beginning that makes a man sit up nights trying to think of a better plan which would be necessary to cut down the burden that we see looming up in the future before this State.

There is nothing new in history. One hundred and twenty-seven years ago this precise question of the difference between one and a board came before this State in a convention. It was arising out of the question of the adoption of the Federal Constitution by a convention called in this State to ratify it in that autumn; and the enemies of the Constitution, among their other criticisms, were saying that there was too much power entrusted to the President; that you ought to have a plural executive instead of one; you ought to have a board instead of one; and to my mind the greatest citizen that has ever existed in this State, to meet that emergency, presented an argument which did meet it and which covered it so fully in its essential particular that it has never been to my mind answered since. I will quote you one or two paragraphs from the seventieth article of *The Federalist* bearing upon that very question and I ask you to note the similarity of the argument which he had to answer to those which we have been hearing in the corridors of this Convention in the last three months.

The seventieth article of *The Federalist* was written by Alexander Hamilton, and these are his words: "But one of the weightiest objections to a plurality in the executive and which lies as much against the last as the first plan, is that it tends to conceal faults and destroy responsibility. Responsibility is of two kinds, to censure and to punishment. The first is the most important of the two, especially in an elective office. Men in public trust will much oftener act in such a manner as to render them unworthy of being any longer trusted, than in such a manner as to make them obnoxious to legal punishment. But the multiplication of the executive adds to the difficulty of detection in either case. It often becomes impossible amidst mutual accusations to determine upon whom the blame or the punishment of a pernicious measure or series of pernicious measures ought really to fall. It is shifted from one to another with so much dexterity and under such plausible appearances, that the public opinion is left in suspense about the real author. The circumstances which may have led to any national miscarriage or misfortune are sometimes so complicated, that where there are a number of actors who may have had different degrees and kinds of agency, though we may clearly see upon the whole that there has been mismanagement, yet it may be impracticable to pronounce to whose account the evil which may have been incurred is truly chargeable. I was overruled by my council. The council were so divided in their opinions, that it was impossible to obtain any better resolution on the point. These and similar pretexts are constantly at hand, whether true or false. And who is there that will either take the trouble, or incur the odium, of a strict scrutiny into the secret springs of the transaction?" Again

he says that "It is evident from these considerations, that the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power. First, the restraints of public opinion, which lose their efficacy as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and secondly, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office, or to their actual punishment, in cases which admit of it."

And he goes on to point out that in no government are such constructions so important as in a government of a people in the form of a republic or a commonwealth. But, now, that, it seemed to your Committee, is, in a question like this, involving considerations which will be most important of any that we can foresee confronting the State, we cannot achieve the economy which is desired, the check against this constant, overwhelming pressure of extravagance, unless the responsibility for the making up of the budget is vested in a single head. There is one other consideration. Economy can only be accomplished by the insistence upon team playing and co-operation among the different departments of the State. You cannot get a department or a hundred and fifty departments to be economical by firing an edict at them, or by sitting in session once a week and telling them they have got to do it. It has got to be a day-to-day practice. It has got to be a steady and continual insistence to one man that he can get along with less money; to another man that more efficient management of his functions would produce the desired result with less expenditure. It has got to be based upon that steady relation which no one else bears to the performance of those functions except the man who, by the Constitution, is vested with the responsibility of seeing that the laws are enforced, and to whom the different departments through whom the money is spent serve as the agency by which that constitutional duty is performed. Nobody but the Governor can do that. A board could not do it. Well, we have more experience in that, which bears it out. We have had an experiment with the board in the last two years. Under the statute of 1913 a board of estimate was created consisting of nine members, and to that board was given all of the power necessary to prepare a budget. Its statutory powers for such preparation were ample, but whoever framed that statute made several vital mistakes. In the first place they created a large board which completely diffused the responsibility in the way that I spoke of, and in the next place they divided it about equally between legislative and executive members. Five members came from the executive, and four members

from the legislative, and it does completely obscure the division of duty that I spoke about a little while ago, which would make the duty of making plans an administrative duty and the duty of deciding plans a legislative duty; and as a result that board never was able to make a report. It became deadlocked in their first session and in about a year and a half it was repealed without ever having accomplished anything, simply and solely from a failure to locate the responsibility necessary to carry out the only function which can meet the emergency with which this State is confronted. It has been suggested that the Comptroller and the Attorney-General should share this duty with the Governor. Well, now, your Committee believes that the Comptroller has a very important function to perform in this matter and we have in this amendment provided for it. But it is not the administrative duty of preparing the plan; it is the duty of assisting in the criticism of the plan after it is prepared. The Comptroller is the great accounting and auditing officer of the State, through whose hands pass all accounts and vouchers and moneys of the State. He has in his hands the information upon which any adequate criticism of the budget planned by the Legislature must ultimately depend. Now, if he is tied up in a board that makes up the budget, he is committed to it. His services as a critic will be thereby at once foreclosed. So it was the view of your Committee that those powers should be reserved and we provided for the sending to the Comptroller of a copy of the budget and the reservation of the right of the Comptroller to make such criticism of it as he desired thereafter to the Legislature.

As for the Attorney-General, it seemed to your Committee that the suggestion that he should be a member of the board was based upon a complete misconception of the duties of that officer. He is not a financial officer. He has no relation of superior officer to these different departments that spend the money. He is the chief law officer of the State and to impose upon him this administrative duty of making up the budget would not bring to that duty the performance of anybody who had any natural relation to it, but, on the contrary, would simply mean an interference with his regular and normal law duties. Then the amendment provides that — of course, the bulk of the estimates that come in are the estimates of the departments which may be called the executive departments of the State. Those are the departments that spend the bulk of the money of the State. There are, however, other branches of the State — the Legislative and the Judiciary — which are and ought to continue to be independent of revision by the Governor. They are the separate branches of the government, and therefore your Committee has provided — or, I should say, of course, their

estimates are a necessary part of the budget because their expenses are a necessary part of the expenses of the State for the next year, and so your Committee has provided that itemized estimates of their expenditures for their financial needs shall be transmitted to the Governor, certified by appropriate officers, and incorporated by him in the budget without the power of revision but with the power which he now has under the present system of making such recommendations in regard to them and exercising, after the performance is over, the present right of approval or disapproval as to those items. On or before the 1st day of February, that is, a month after the session is under way, the Governor is to transmit to the Legislature a budget made up out of these estimates and containing a complete plan for the proposed expenditures and estimated revenues. Now, your Committee went into considerable care in the framing of the provisions which defined this budget. I need only say here that the object of the budget is to provide not only a plan of expenditures and a suggestion of how the revenue necessary is to be raised, but it is to furnish with it balance sheets of the existing condition of the State and a statement of not only its resources and liabilities but its current revenues and current expenditures for the past two years for the purpose of comparison. It is the belief of your Committee that it is necessary to provide in pretty careful detail what this procedure shall be, because experience has shown that without such rather careful definition it won't be done. Different cities in the State have budgets, very much better budgets than the State government has, and even there it has been found that unless there are certain landmarks pretty clearly stated there is a tendency to drift away into careless habits in regard to that.

So, as I say we have endeavored to open up the way with some detail and with some care the elements of what a budget should contain, getting them from the best authorities that we could collect. There was a good deal of careful consideration about the time when it should be submitted. Of course, it is the very essence of the plan that the budget should be submitted so early in the session as to receive necessary publicity. Any other plan would defeat it altogether, and at the same time it was necessary to allow sufficient time so that a Governor, even though he came in on the 1st of January, would have a fair chance of deciding upon the essential elements that would go into his own budget when he submitted it for the first time that year. After considerable discussion the Committee was of the opinion that the 1st of February would allow sufficient time for that and would yet allow it to come before the Legislature early enough to receive adequate attention. We talked on that subject with two Governors and the opinion of both

of them was clear that to prepare such a plan or such a budget would involve no greater burden, but I think they were inclined to think it would be less of a burden than the present burden which is thrown upon them of pruning down the appropriations during the period of thirty days after the Legislature adjourns. During this latter thirty days they have also the almost intolerable burden of passing upon some 500 other bills not relating to financial matters which are before them during the same period. So we reached the conclusion, and I think it can be justified, that the period of February 1st would meet those different elements of the problem better than any other date. Then, after the budget is prepared, there follows the duty of the presentation and discussion of that duty before the body which is to give it — not only to ultimately decide it, but to give it the requisite publicity by which every member of the State will have an opportunity to know what it is proposed to spend. The right — the right of the man or men who prepare a budget to appear in support of it before the body which is to finally decide upon that budget and be subject to interrogation and cross-examination, if necessary, by them, as to the items of the budget, is dependent upon the primitive and fundamental right of all Anglo-Saxon countries to be heard, and it follows as a natural matter of course that when you give to a man the right to prepare a plan which is going to be criticised and decided upon, that you give him the right to be heard in defense of it and to submit to examination in regard to it. Now, the following paragraph, at the top of page 3, contains the provision in regard to the fulfilment of that right and of that duty. Your Committee has heard many suggestions of what might happen and what would not happen when that was carried out. It bases its decision upon the normal, regular power of an American community to carry out a plain, manifest duty in a normal and business-like way, instead of in an explosive way. It is based upon the proposition that if the budget system is adopted in this State, as it is adopted in the cities of the State, it will be carried out in the way that American citizens carry out their regular parliamentary business duties everywhere. Normally, of course, it is to be expected that the presentation of a budget and the answers to inquiries in regard to it will be made by the heads of the respective departments; normally it is to be supposed that where necessary that treatment will be given in some such manner as the treatment of this body in Committee of the Whole is shown.

Speaking as a former head of department, I can only speak in the strongest terms of what I believe would be the beneficial effect upon a head of a department of having to face that duty. When I presented my estimates to Congress, I tried to take care to

know something about them and to be ready to submit to interrogation by the committees of Congress in regard to them. But if I had felt that I was going to be compelled to go through such a performance in regard to those estimates that I have to do here in regard to this bill, I can only say I would have known a good deal more about it than I did; I would have known more about my department. I believe that no greater means of imposing responsibility, that responsibility which is necessary for economy, upon the heads of the different departments of the State could be found than to put them in such a position as I have to be in here to-day, in presenting this bill to you. It may limit the eligibility list for department heads, but I do not think that would be a bad thing for the State. And I don't think that in any other way you will get the adequate sense of responsibility which is necessary, as I have said so many times, to meet this situation. Normally I don't suppose that it would be a regular or ordinarily necessary performance for the Governor to appear; but if you are going to impose upon him the ultimate responsibility for defending the policy of taxation in this State, being responsible for a policy of economy in this State, ordinary fairness requires that he shall have a hearing in regard to it before the body which is to make that ultimate decision. I have, among the different inquiries that we have conducted, that I have conducted personally in regard to how such a system would work, I have been of course impressed by the views that have come from men who have had legislative experience and among the others I was very much impressed by a letter that I received from the man who had been for five years Speaker of the Assembly here, and who is now in the United States Senate, Senator Wadsworth. On this precise question of the appearance of the Governor in defense of the budget, he wrote me as follows: "I agree also with your proposition that the executive be permitted to take part in the proceedings of the Legislature. This would not only force the Legislature to seriously consider the recommendations of the Governor, but would also compel the latter to discuss his proposals in a deliberative body rather than exploit them upon the stump in a demagogic appeal to the people. I believe this change can be made without invading the rights, powers and prerogatives of the legislative branch. Any such invasion I should strenuously oppose." Now, that is pretty good authority from experience, and he points out one particular evil which I think the introduction of such a system would tend very strongly to reduce and minimize. At present the Governor has a tremendous advantage over the members of the Legislature when he is at issue with them. Whatever he says carries in the press. Whatever they say is lost in the atmosphere of this room.

He is one man, they are a body of men. But if what he says is said in answer to what they ask and in conjunction with what they say, both question and answer have got to be given equal publicity. And there is no surer way, in my opinion, than as Senator Wadsworth pointed out; there is no surer way of enhancing the dignity of the legislative proceeding than to put it in a position where the issue can be discussed in a parliamentary manner rather than to leave it under the condition where the Governor can go out and "whale" the Legislature over the back without any adequate possibility of reply.

Then there is another situation that you may not think of. This method offers a constant, natural, normal and easy way for the Legislature to keep their — I was going to say — fingers upon the pulse of the administrative machine. They have no way now of finding out whether there is wrong committed in any of the departments except by appointing a special committee of the Legislature. The minute you appoint a special committee of the Legislature you appoint a special prosecutor, you bring in hostilities. The minute a man is appointed to specially investigate anything, why it is up to him to find out something wrong. He does not justify his existence unless he finds out something wrong. The result is that any special committee of investigation goes out to "get" somebody. Well, now, just take, for instance, such an occurrence as we had last spring. If this system had been in effect, in order to discover a check on the joy-riding that some of the Public Service Commissioners of the city of New York were supposed to be taking in government automobiles, it would not have been necessary for a special commission to be appointed and employ counsel and go to the stenographic expense of holding hearings and consume that much time, but some member of the Legislature who lived down in Nassau might see one of the commissioners riding around in a car marked "P. S. C." and he would merely rise in his place when that element of the budget came on for examination and ask about it. He could develop in a few minutes' information enough to very materially, probably, reduce that item of the estimate. There would not be any scandal or row. The public would not be excited over the thought that somebody's head would come off, but there would be constantly every year a continuing check upon that kind of abuse and that kind of evil in the forum whose principal duty it is to keep checks on expenses. Now, the final point of difficulty that your Committee had before it to determine was the relation which budget-making should bear to other financial legislation by the Legislature. That was one of the most difficult problems, one which occupied, I think, more of our prayerful attention than any other. There were vari-

ous views discussed. Of course, there were some people who strenuously opposed any restrictions; who were of the opinion that the thing to do was to let the Governor prepare his budget, submit it to the Legislature and let them do what they pleased with it. If necessary, let them wipe it out and make a budget of double the size. Let them increase every item in it. There were others who felt there should be absolute restriction; that when the budget was submitted it should include all financial legislation and that no power should be left to pass any appropriations that were not recommended in the budget; and in between these two extreme views there came others. One that was suggested was that the Legislature should not have the right to increase the items unless they did it by a two-thirds or three-fourths vote; and that idea was quite a favorite idea, for a while, but we were chiefly disabused of it by the information that was given us by our fellow members on the Committee who had had experience in the Legislature and who told us fresh instances of that characteristic that Mr. Taft spoke of when he was here of how readily roses grow over the party wall. So that we soon reached the conclusion that no restriction depending on a proportional vote would be adequate. There was an instance that took place last winter which brought out the impossibility of depending upon such a restriction as that. The chairman of the Finance Committee of the Senate, last winter, was a most unusual man, who had embarked on a stern policy of retrenchment; who cut down, for instance, the local bills that were introduced from some \$10,000,000 to less than \$1,000,000; the kind of man that you don't often get in charge of a finance committee of any Legislature or any congressional body. He told us, however, of his experience. He pointed out one instance where a demand upon the budget on behalf of a member of the Legislature was made so insistently that after the Committee had turned it down, it kept coming up and coming up. He was told they must do this for this man. They must do it. He said, "No, it is not in the interest of the State." "Well," they said, "he cannot get a re-election unless you do." He said, "You can move to discharge the Committee, but I won't recommend it;" and finally the Committee was discharged and this appropriation to help this legislator get a new election was passed against the vote of everybody in the Senate except the chairman of the Finance Committee and the leader of the minority, Mr. Wagner.

Mr. Wagner — How do we prevent that in this new proposal? You are coming to that?

Mr. Stimson — If you will permit me to answer that in my argument I will go on.

Mr. Wagner — Very well.

Mr. Stimson — Now that indicated the impossibility of depending upon any vote unless it was a pretty big one, and, after consideration, we finally reached this plan: Members not only of the Committee but members of the Convention and everybody that we have discussed it with felt very keenly that in taking a step which is as novel in State procedure as the budget plan necessarily is, the way should be left open to correct the possible abuses that might grow out of the power of recommendation of the budget which is given to the executive. I myself have felt that the danger of such abuses has been somewhat exaggerated, but nevertheless they are conceivable, and I was myself opposed, as all the Committee were, to an absolute restriction against any introduction, initiation by the Legislature, of legislative appropriations. For instance, it was said, suppose the Governor from a prejudice against some institution or against some part of the State deliberately sets out to starve that institution or that function, is there any remedy? Or suppose that he enters into some deal? Or suppose that the Legislature desires to initiate some new activity of the State. Suppose that some new proposition comes up in the development of civilization, the demand for which the representatives of the people are particularly the ones to respond, and they desire to initiate a new activity? Is that going to depend wholly upon the whim of one man, as to whether it shall be granted or not? Whether, under these circumstances, and after careful consideration, in order to meet those two views, first, in order to leave open the door to protection against executive abuse, and, second, to leave the possibility of the initiation of new enterprises, the plan proposed by the amendment was adopted. Now, that provides that when the Governor introduces his budget that budget must be disposed of without addition. The Legislature can cut down, the Legislature can strike out, but they must approach it from a standpoint of a critic and not from the standpoint of a rival constructor. The budget must be protected against its being wholly superseded by a new legislative budget and a resort to the same situation that we have now. Otherwise you would have nothing. Otherwise you would not even in the beginning impose upon a governor a sufficient sense of responsibility to do more than our defunct board of estimate did last year. That board failed because they were not protected and because the sense of responsibility was not defined. You must protect the Governor's budget from any such fate as that by providing the self-denying ordinance that I spoke of as being in existence in all other deliberative bodies of all other countries. They must approach it in such a way that it will not be subject to destruction even at the hands of people who want to

log-roll against that budget. But after it is passed, after the public opinion of the State has been enlisted in respect to that budget, after the people of the State know how much money they are going to be taxed for to pay that budget and exactly how much of the responsibility for their future burden is going to be chargeable to the door of the Governor — after that is done then you can well, under proper restrictions, leave the right of initiation to the Legislature, which it has now.

Of course, all kinds of abuses are conceivable. Of course it is conceivable how a rampant Legislature might try to do anything after that time. But, gentlemen, American institutions are not designed for Latin-Americans; American institutions are designed for Americans, and the provisions against the explosions, the abuses which occur in other than trained, self-governing countries, will not, under normal circumstances, be necessary here. For instance, under our present machinery it would be possible in any year, in either the State or national government, to imagine theoretically a perfect dead-lock. Any year the Legislature might set out to starve the State. Any year the Governor with his vetoes, after the Legislature had finally adjourned, might do countless things that he does not do now. But we all know it will not happen; we all know it never does happen. And what an American convention seeking to work out a proper and workable form of government has as its duty to do is to try to so arrange the machinery that it will enlist behind it the great forces of public opinion, of publicity, of common business sense and to provide sufficient check against the kind of abuses that experience has shown may in future arise. Now, this proposition represents in this respect the best solution that your Committee can offer. It provides that after the budget is disposed of the Legislature may, if it chooses, by independent bills, subject to the regular veto of the Governor, each bill of which is limited to a single object so that you cannot lump them into a new budget or a false budget or an omnibus bill, or a log-rolling bill — the Legislature can then, under normal conditions, propose its suggestions for new financial legislation. If the Governor has drawn a good budget, he has got behind him all of the power of public opinion that can have been aroused by the publicity which that budget has received; and if the Legislature seeks to run amuck and to pass appropriations which impose an additional burden on the State, every taxpayer of the State will know who did it, and I, for one, do not believe that that power under those circumstances will be abused.

Even if it is abused, you have all the precautions which the present system permits. As to those items you have the gubernatorial veto retained. As to those items you have in substance, if the Governor opposes them, his right to veto them, and the re-

striction then imposed that they cannot be subsequently passed except by a two-thirds vote. Now, in our opinion, these safeguards were sufficient to insure a fair trial of this system, and its eventual success. There were one or two other matters of minor importance, which, however, we felt necessary to take up in this connection. The present fiscal year of the State does not begin until the 1st of October of each year. Everybody who has testified before your Committee thinks that that is the wrong time for it to begin. On that subject there was no difference between the Comptroller or any member of the Legislature who testified before us. It is too late in the year. There was some difference of opinion as to when it should be put, but everybody agreed that it ought to be pushed forward as far as possible. You will see that the effect of having it so late is that the expenditures of the preceding fiscal year, which must be computed with the budget, must be based upon an actual experience, as of the 1st of January, when the Legislature meets, of only three months. The Committee therefore agreed, and I think everybody who was before us agreed, with us, that it would be an advantage to move it forward to the 1st of July. It might even be possible to move it, later, still forward. We left that within the power of the Legislature. In the second place, under the present system, appropriations made by the Legislature expire two years after the date when the appropriation is made. That is a very serious inconvenience in practical administration. It means that appropriations are expiring at different dates all through the year, and an administrative officer, on whom is imposed the duty of expenditure, may find himself tied up at any old time by the expiration of his appropriation. It was unanimously agreed that there should be a fixed period, not a sporadic period, and the amendment at the end of page 4 is for that purpose. That would make it correspond with practically every other system with which I have any familiarity; and to meet the difficulty that arises in closing up all of your accounts, at the end of the fiscal year we provided that obligations made for expenditures during the year, during the fiscal year when the appropriations would expire, would be allowed a margin of three months thereafter for payment. That was a suggestion made by the Comptroller as a practical means of meeting a difficulty in practical administration.

In other words, gentlemen, that presents the outline of the plan proposed by your Committee. In short, as we look at it, it is a plan for introducing forethought into the financial administration of this State. It confers no additional power upon the Governor over what he has to-day. To-day he has the right to veto any appropriation which is passed by the Legislature. He has the final say. All that this plan does, so far as his power is

concerned, is to transfer the exercise of that power to the beginning of the performance and to compel him to make his proposals in public, to lay his hands on the table, to submit them to the scrutiny that will come during the legislative session, and if there is any likelihood, as has been suggested, of abuse, of bargaining by the Governor with members of the Legislature, *quid pro quo*, for bills, why he has got a great deal more power to do that now, to-day, when he has the last say, than he would have under the present plan, when he would have to have his say in the beginning, and when the action of the Legislature as to his proposals, his budget, would be final, and his veto power as to that budget would be taken away. It has been said that it diminishes or impairs the dignity and the power of the legislative function. I have said all that I wish to say about that. In my opinion it restores that dignity and that power from a condition where it has been likely to be abandoned to the executive. The only thing that it takes from the Legislature — the only duty that it takes from the Legislature is the administrative duty of making a financial plan. And that administrative duty ought to be in administrative hands. Put into the hands of a legislative body, that administrative duty is and has been constantly shown to be a prolific source of log-rolling, not to say legislative graft. And to say that to take that out of the hands of the Legislature is to impair its dignity and power is like telling the doctor that when he seeks to keep poison out of the stomach he is an enemy of the stomach and is seeking to destroy its dignity and function. On the contrary, gentlemen, the purpose of this is not to destroy, but to recreate legislative dignity and power, to place our legislative body in a condition where they will be able to devote themselves intelligently to the consideration of the broad fiscal policies of this State upon which they will have the final decision, instead of being obliged to spend their entire session in hearing before committees which fellow shall get this and which fellow shall get that. If to remove from them that function is to destroy their dignity and their power, I very much misunderstand what dignity and power is. Finally, only a word: It must be evident to every member of this Convention that the question far transcends in importance the mere question of extravagance or economy in this particular State. The evil is one from which practically every State of the Union has been suffering. The evil is one from which our national government has been suffering. This Convention meets at a time when what it does in the solution of this or any other similarly important problem cannot fail to have a most important effect upon the fiscal policy and the welfare of not only every other State in the Union, but the Federal government itself, at a time when

reform in those fiscal policies which enter into the great defensive program of this country was never more critical, never more important than it is to-day. Mr. Chairman, I am going to ask unanimous consent that this article be read paragraph by paragraph and discussed in that way. It seems to me that the sections are so long that it would conduce very materially to the facility with which the different portions of it would be treated if we should follow that course.

Mr. A. E. Smith — I would like to ask that those who have any objection to this bill be permitted to deal with the whole subject because it is all related one section with the other, and to read it paragraph by paragraph would give the opponents of the measure a disjointed and a broken-up argument against it.

Mr. Stimson — I have no desire to do that and I have no desire to stop any argument at all on it. I only propose that when we take up the bill —

Mr. A. E. Smith — For adoption, you mean?

Mr. Stimson — For adoption, we will take it up paragraph by paragraph.

The Chairman — Is there any objection to the suggestion that when the Committee comes to consider this bill it be acted upon paragraph by paragraph?

Mr. Brackett — Not by section, Mr. Chairman?

The Chairman — There are only two sections of the bill. It is broken up into seven paragraphs, the first Section is —

Mr. Stimson — Only one paragraph in the last section, that is, on page 4, there is an amendment as to Section 24.

The Chairman — So the question is whether it shall be considered, when the Committee comes to deal with the matter, paragraph by paragraph, or as an entirety.

Mr. Quigg — Mr. Chairman, I object. I think if there is going to be general debate we would all be better informed if we listened to it and then made our arrangements.

Mr. A. E. Smith — Mr. Chairman, I have listened with a good deal of attention to the explanation made by the gentleman from New York, Mr. Stimson, and I have read with some degree of care document No. 32. I desire to say to the Convention that I speak upon this question of State appropriations with probably as much personal experience as any man in the Convention, certainly with a great deal more than that of most of the delegates. I was chairman of the Committee on Ways and Means in 1911 and I have been a member of it ever since with the exception of the year 1913 when I was Speaker and could not be a member of that Committee. I speak on the subject from the practical side rather than from the theoretical side. I am in accord with the Committee on the preparation outside of the Legislature of a budget

and its submission to the Legislature, but the proposal set forth by the Committee on Finance, and so well and ably explained by the gentleman from New York, to my way of thinking does not go half far enough, because as a matter of fact that proposed budgetary reform reaches only about one-half of the appropriations of the State. Now I take it that the budget, so-called, will be what is known to-day as the Appropriation Bill, or the bill commonly known as the one that makes provision for the maintenance of the State government. In the year just passed that bill amounted to \$32,000,000, but there were \$63,000,000 appropriated by the Legislature, so that there are \$31,000,000 still left to be taken care of by the system that so much fault has been found with. Now it may be urged that is something for the Governor to take care of, but I submit to this Convention that any man in the Governor's chair, no matter whom he may be, will be interested in the first instance in having his budget that he recommends to the Legislature as low as he can possibly make it. Now that is practical, hard, common sense and if we are unwilling to recognize that we will never get anywhere in our discussion of the proposed method of handling the State's finances. It may be urged that all the special bills could be included under the head of construction, if they belonged there, improvements, if they belonged there; but no Governor will ever put them in there. Why? Because you have by the terms of your own bill provided another way of doing it; a way which takes away from him any criticism that may come to him for initiative or suggestion, in the first instance, of this particular appropriation, so that the \$31,000,000 this year, had this been in effect this year, the \$31,000,000 of the \$63,000,000 would have come under the heading of what you refer to on lines 17 to 25 on page 3 of the bill as "further appropriations." About that there can be no dispute. The bill the chairman spoke about for the bridge in Wayne county, the Governor would never put that in the budget. That would belong among the bills for further appropriation.

Mr. Stimson — I did not mention the Wayne county bridge but I suppose you refer to the one I did refer to last winter. As a matter of fact wasn't that vetoed by the Governor?

Mr. A. E. Smith — Yes.

Mr. Stimson — Would it not be taken care of in the same way under the system?

Mr. A. E. Smith — The Governor would never include it in the budget. That's my point.

Mr. Stimson — But he would take care of it.

Mr. A. E. Smith — Yes, precisely; but there are so many that he did not take care of that I want to see about them and when I

get down to it I will explain it to the House. What happened to Wayne county should have happened to several other bridges and creeks and normal schools; but it did not happen and I propose to show to the Convention that it was the intention, if I am able to read simple English, of the Constitutional Convention of 1894, that no such bill as the Wayne county bill should pass this House by seventy-six votes; and the Committee has failed, so far as I am able to see, to cure that situation although it can be easily cured and it was intended that it be twenty years ago. I propose to try and cure it now.

Now when I submitted my Proposed Amendment requiring the heads of the departments or the commissioners to make their requests to the Governor under oath, I did not then have in mind any budgetary system that would be prepared outside of the Legislature itself. I had in mind simply publicity — the incorporation, so to speak, of all these facts in the Governor's annual message. The Governor is now required by law to submit to the Legislature, at its first annual meeting, a statement of the financial condition of the State. It is because that makes no mention of proposed appropriations that nobody has ever been interested in it. When it is read to the Legislature there is not a man stays in his seat. It is printed and on the desks of the members, and, except for the purposes of discussion on very nearly every other part of it, except the financial article, it is never heard of again. If I was to say that a budget should be prepared by any person I would say the man to prepare it would be the Comptroller, because the Comptroller can have no possible interest in it. If we want to take a good common-sense view, good, hard, practical facts, let us now admit that the Governor does have an interest in some departments as against others. All Governors in that respect are alike. They have all made their personal appointments, going back as far as I can remember. Every Governor has had at the head of some of the departments of the State somebody that he personally appointed for reasons best known to himself. Under this system, to say the least, there exists the temptation to the Governor to see that these particular departments of the State have all that they want, no matter who has to suffer for it. If there is anybody outside of the Legislature to prepare and present a budget, in the ordinary course of affairs, in the ordinary course of good business, it ought to come from the fiscal officer of the State — the Comptroller. It should contain a comparison with former appropriations for those specific items. More important than anything else and above everything else, it should put down in black and white just how much money there is on the 1st day of that January to the account of each one of these particular

funds. That is the one big thing that it should contain. There is no machinery in the Governor's office for it. After all, it will have to come from the Comptroller. Look over the list of the Governor's employees. With the exception of the stenographers and typewriters and the telephone operator and the pardon clerk and his assistant, every single attache of the Governor's office comes into office with him and retires when he retires.

Mr. Brackett — The military secretary, too?

Mr. Quigg — Does the gentleman realize that in using the term "Comptroller" he may be mistaking himself and us, until we know what the plan of the Committee on Governor and Other State Officers is? If the Comptroller is to be merely an auditor, as I understand is the idea, he is assigned to that one thing. If he is to be the fiscal officer of the State, or, as it were, Secretary of the Treasury — what the Comptroller is now — the gentleman is talking about another officer, and I should like to inquire just what he means by the use of the word "Comptroller?"

Mr. A. E. Smith — Well, by "Comptroller" I mean the position that the Comptroller now holds toward the departments of the State, the fiscal officer. Now, whoever you may decide is hereafter to be that fiscal officer, whether he is to be known as the Secretary of the Treasury or the Comptroller or the head of the department of the treasury, he will be the man that will be in a position, as I see it, to properly supply this information. Now, as a matter of fact, where does this information come from now? Does it come from the Comptroller's office? Not at all. The Comptroller after his election is an individual man. Elected in November, after a hard and strenuous campaign, he goes away for a little while; takes a well-earned rest, comes back in time to engage in the pomp and ceremony of the installation of the new State officers.

Now, who is it that prepares this budget? Who is it that does the work now required of the State Comptroller under the Finance Law? The experts in the office of the Comptroller. There are fifteen or sixteen men in the Comptroller's office to-day who have been there upwards of twenty years. The government changes. Comptrollers come and Comptrollers go; Governors come and Governors go; but these men who are experts in the different lines of the State finance have been there over twenty years, every one of them; and that is where the Governor will have to go for his information. If he was in office for a year, not to speak of a month, that is where he would have to go; and experience has so taught every man in the Legislature that he does not even go to the Comptroller himself, any more than the Finance Committees of both of these Houses consult with the

Comptroller. Everybody knows that is so. In the Legislature, the different committees, the Finance Committees, send for the men who are at the heads of the different departments and who are experts in them. If you want to find out anything about any financial plan, you send for Deputy Comptroller Wendell, who has been in the Comptroller's office for twenty years, and who knows all about it; and it is the same with the other department heads over there. So that after all while this may appear to be the result of action by the Governor, while it may appear an executive budget, it will have to come from the office of the Comptroller. Now, there is another weakness about it. We must bear in mind that about 80 per cent of your budget is statutory. Where the abuses have crept into the finance matters of the State in the past has been upon the initiation of new work, the committing of the State to some great public improvement which is going to cost a great deal more money than is appropriated for the coming year. That is a very popular move in the second year of every Governor's term. If he is not re-elected he finds it convenient to pass two-thirds of the buck to the next fellow. If he is re-elected he is all right. So he does not hesitate to commit the State to a series of local and private improvements which may cost a half a million or even a million dollars, although against his financial record there is only chargeable \$50,000 because he only desires to have the plans drawn while he is Governor. Now, that is a fact, and that comes within the budget, and absolutely no remedy appears anywhere in this bill for that condition, and that is the one thing that needs remedy more than does the budget, because the budget, as I said before, is practically 80 per cent statutory. There can be no change in the salaries fixed by statute.

Mr. Brackett — Statutory and mandatory.

Mr. A. E. Smith — Statutory and mandatory. Invariably different items come up for which the Legislature shall make provision. Take the Governor's own office, starting with the Executive Department. The only one item that is what we call a liquid appropriation, and subject to any change is the office expenses, postage and expressage and documents and papers and things of that kind. All the rest is fixed by statute. When we are bringing under the supervision of the executive in the first instance that part of the appropriations that need the least regulation, we are leaving free to the Legislature and to the Governor to do as they please after the Appropriation Bill is passed. Now, in my bill, No. 345, which I am going to ask the Committee of the Whole here to incorporate in this proposal, I provide that every head of a department and every State office or head of a bureau shall swear

to his request. Now, gentlemen, speaking from what I said a few moments ago, from a personal experience, that is the one great thing that you must do. If you do not do that, all the rest of this estimating by the department heads to the Governor means nothing. That is a question of opinion, and no Governor will set his opinion up against the head of the department that he has given full responsibility for the success of its undertaking. There is a popular imagination probably that when the requests come over to the Legislature for appropriations from the different departments the Legislature accepts them just as they come from the department. Why, that is not the fact. If that was the fact, upwards of \$15,000,000 more than has been appropriated for the last five years, to my own knowledge, would have been appropriated every year. The Legislature, through its Committee on Ways and Means, has, first, a check upon that; secondly, through its Finance Committee of the Senate, it sends for the head of every department and goes over the items with him, item by item, and where an item differs from the bill of last year he must give his reason for it. That is not any more than a Governor can do — or, at least the Governor cannot do any more than that; but when you say to the department head, “You swear to that statement,” he will make a little closer study of it than he does at the present time. One of the evils at the present time, and has been, to my knowledge, for as long back as I can remember, is that the department heads themselves pay no attention to these matters. In every single department of this State you will find some man who has been there for a great many years, who has charge of the finances, and let the chairman of the Ways and Means Committee summon the head of a department to come before him in relation to his appropriations, and what do you find? You see the department head walk in, and behind him his clerk with a package that big in his arms, and you may direct your inquiry to the head of the department, and he will invariably turn around and say, “What about that?”

Now, that is the fact. Department heads will have these itemized statements that they give to the Governor prepared just as they have been prepared right along, by the clerks, and some of these clerks have attained some of their reputation for ability by being able to convince the Legislature that they need a little more money every year. Now, about that there is no question. Somebody said the administering of an oath would be an insult, or of no value. I say now that there is not a head of a State department here that will put his name down on paper and raise his right hand and say that what that paper contains is necessary, unless he reads it first; and that is where you get your safeguard over appropriations.

You will compel the department heads to become better acquainted with the fiscal business of their departments rather than the politics of their respective offices.

Mr. Wickersham — I move that the Committee do now arise and report progress and ask leave to sit again at half-past 2, and continue the consideration of the business before the Committee.

The Chairman — You have heard the motion by Mr. Wickersham, that the Committee do now arise, report progress and ask leave to sit again at half-past 2. All those in favor will signify by saying Aye, contrary No. The motion is agreed to.

Mr. Wickersham — I call the attention of the Convention to the fact that the Committee merely has risen to report progress.

Mr. J. L. O'Brian — Mr. Chairman, I would like to call the attention of the members of the Committee informally that I have a report from the Committee on Rules.

The Chairman — The gentlemen will please take their seats. The Convention has not adjourned. There is a report to be rendered to the Convention. The Committee has risen only to report progress.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Marshall — The Convention has resolved itself into the Committee of the Whole and proceeded to consider the special order, being Proposed Amendment entitled, "An amendment to the Constitution by inserting a new article in relation to the budget." The Committee has considered this matter and reports progress and asks leave to sit again.

The President — The question is on granting leave to sit again. All in favor will say Aye, contrary No. The leave is granted, and I assume, Mr. Marshall, that this means that this afternoon you proceed with the consideration of the same subject.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules presents the following resolution.

The President — The Secretary will report the resolution handed up by Mr. J. L. O'Brian.

The Secretary — By Mr. J. L. O'Brian: The Committee on Rules recommends the adoption of the following: Resolved, That when the Convention resumes consideration of General Order No. 48, debate shall be limited to not exceeding one hour, and the speeches of individual members to not exceeding ten minutes each.

Mr. J. L. O'Brian — Mr. President, as that resolution provides, although the Clerk did not read it, this relates to the amendment for registration of voters, which was under consideration all or practically all of last evening. That Proposed Amendment has now been under consideration twice, and each time for practically

the entire evening. In order of business it will be taken up at the conclusion of the present order, which is the so-called budget amendment. To-morrow two other special orders have already been set for the Convention. It is the feeling of the Committee on Rules that there should be some limitation of further debate on the subject of the registration of voters amendment. I therefore move the adoption of this resolution.

Mr. J. G. Saxe — Mr. President, I have been handling that resolution for the Committee on Suffrage so far, and I wish to say that the rule is entirely satisfactory to me.

The President — Those in favor of the resolution will say Aye, contrary No. The resolution is agreed to. The Secretary will read the report.

The Secretary — By Mr. J. L. O'Brian. The Committee on Rules recommends the adoption of the following: Resolved, That when the consideration of a special order in Committee of the Whole is not finished by the time set for another special order, unless otherwise directed by the Convention, the order under consideration shall continue. The Committee on Rules shall report a rule for a limitation of debate thereon, and the special order next in order of time shall follow thereafter.

Mr. J. L. O'Brian — Mr. President, this proposed special rule is designed to meet a situation not covered by the existing rules of the House, namely, this question what shall become of a special order if at the conclusion of the day or of the time set for it, it shall not be finished. Shall it be laid over to a future date, or shall it continue along until completed? Under this rule a special order under consideration, if not completed by the time the one next in order is reached, shall nevertheless continue unless otherwise directed by the House at that time, and then at that time, namely, at the time when the second special order is reached, the Committee on Rules shall bring in a rule limiting debate on the completion of the order under consideration. That will allow the House to then debate the question as to whether or not there should be any limitation on debate. So that no one is foreclosed. This merely maps out a business for the orderly conduct of the business of the House. I move the adoption of the resolution.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

The President — The hour fixed by the resolution having arrived, the Convention will stand in recess until half-past 2 this afternoon. Whereupon, at 1:05 p. m., the Convention took a recess until 2:30 p. m.

AFTER RECESS—2:30 P. M.

The President — The Convention will come to order. The Convention will go again into Committee of the Whole in consideration of the special order of the day. Mr. Marshall will resume the Chair. (Mr. Marshall takes the Chair.)

Mr. A. E. Smith — Mr. Chairman, when we took recess I was on the question of the submission by the Governor of the itemized estimates of appropriations to meet the financial needs of his department classified in relative importance and in such form and with such explanation as the Governor may require. Now my suggestion with regard to that is that the statement, the itemized estimate, be sworn to. Before recess I was about to say that at the present time it is required by the State Finance Law that every voucher passed upon by the Comptroller of the State be itemized and sworn to, to the smallest item of expense; so that it would only be imposing upon a department head, in the first instance, a duty that is his afterwards when he attempts to draw the money. Now, take the average department of our State; every commission or every head of a department can figure out to an absolute certainty the necessities as they exist upon the date that he makes the itemized request, the necessities of that department. There are fixed salaries. A great number of them are statutory. There will be no harm for him to swear to that. If, as I said before recess, it had no other effect, it would surely compel the department head to become more familiar with the financial side of the administration of his department. I am not going to spend any more time on this.

Mr. Wickersham — What is it that this official is to swear to? What is it on which you lay so much stress?

Mr. A. E. Smith — Swear to the necessity for the conduct of his department for the next fiscal year.

Mr. Wickersham — Swear that, in his opinion, it is necessary for that particular purpose that is indicated?

Mr. A. E. Smith — That is right. I claim he can do that. I claim that he can find that out, as to necessities, almost to a certainty and then he need only swear as to his opinion on desirable appropriations, stating why he would like to have them and what reform he seeks to work out by them, what new activity he proposes to enlarge upon or improve by the appropriation of additional money for that particular purpose. Now, starting with the Governor's office, the Governor can, with the exception of two items in his whole office, make affidavit to the necessity of the

appropriation for his department. Every one of the commissioners could do it. The Superintendent of Insurance and the Superintendent of Banks can tell to a certainty what is required to run their departments for the coming year. It would have another effect which I think would be very good. After that official has sworn to the necessities for the next fiscal year, it would be rather difficult to get him to change his mind; and they have been known to change their minds as to the necessity, particularly when there is found number one, two or three on a civil service list, some individual that is "entitled to consideration."

Mr. Cullinan — Mr. Speaker, I would like to ask you with reference to three topics, and, from your standpoint as an active member of the Legislature, I would like to get your views. First, last winter Mr. Adler introduced a bill entitled "An act to amend the Legislative Law, relative to financial information for the use of the Legislature and the preparation of the annual budget and appropriation bills." I would like to get your views on that measure and the reasons why it did not become a law. Second. As to the advisability of wiping out these balances of appropriations after three months, instead of the two years' clause at the present. Third. What in your judgment would be the practical effect of having the Governor or State officers come before the Legislature? I would like your opinion on those three propositions.

Mr. A. E. Smith — Mr. Chairman, I will take the last one first. This proposed amendment to the Constitution provides that "the Governor, the heads of such departments and the Comptroller shall have the right, and it shall be their duty, when requested by either house of the Legislature, to appear and be heard in respect to the budget," and so forth and so forth. That really makes no change in the present system. The Governor has that right at the present time; he has always had that right. The legislators themselves,— the legislative committees have the right now of subpoenaing, under the Legislative Law. If they desire to find out something about any matter pending, they can subpoena a man and compel him to testify. I think that answers that point. I fail to see how that makes any change. The Legislature can demand this information, and if it is refused, it can, with propriety, withhold the appropriation. I believe, myself, that the Legislature to-day has a greater power than will even be given to the Governor by this. This seems to be more in the nature of a request, whereas the Legislature can now subpoena and can compel the witness under oath to testify as to any fact, in relation to any pending proposition, whether it be an appropriation bill or any other matter. That is very carefully safeguarded at the

present time, and that may also answer the question of why the Legislature did not pass the Adler Bill. Well, the part of this bill that proposes to have the appropriations lapse three months after the fiscal year is a very, very good thing, that should be done; very necessary. Two years is too long a life to give to an appropriation of the character of office expenditure and traveling expenditures. The department should be compelled in the single fiscal year to have that reappropriated; if for no other reason, it would call attention to it, the fact that it is being reappropriated.

Mr. Cullinan — Mr. Chairman, I would like to ask the gentleman another question. Assuming, for instance, that there is allowed an appropriation of a million dollars to construct a State hospital. The contract is made. This instance I have in mind as having occurred. The contract was let and the payments arranged in accordance as the work progressed, with the appropriation in the hands of the State Treasurer. The State Architect refused to allow the work to go on, rejecting the brick, for instance, and the matter was suspended for two years. When they got ready to go ahead again, they had to have a new appropriation, which involved some uncertainty, and made it somewhat difficult to deal with the contractor. Query: Is it better for bookkeeping to have the appropriation discontinued in three months, or is it better in the interests of the State to have it stand as it is now?

Mr. A. E. Smith — It is better that it be discontinued in three months, because then the contractor will know exactly where he is at. He will know it better by this system than by the two-year system, for the reason that there could occur, even under this, a change of administration, and the new administration may not be friendly to the project instituted by the former one. This is a 50 per cent. cure of that situation because it guarantees to the contractor at least that if the project is instituted in the first year of a Governor's reign, a reappropriation will be made in the next one. It meets it half way. It meets it so far as you can meet it by statute. The other 50 per cent. must be supplemented by the inclination on the part of the State to live up to its contracts and keep its faith. That is a very rare action. I think you will find very few contractors will back away from the State because of the fear of lapse of appropriations not being reappropriated for the single purpose. Now, one of the evils that have crept into reappropriations is that they are reappropriated for a purpose other than that for which they were originally appropriated, and that can happen here at the end of the two years as well as the end of the single fiscal year. Now, in the report set forth in Document 32, one of the essentials of the report is to require information, to get information, that it may be made public. I claim from my

knowledge of the handling of the finances of the State that you cannot get real, genuine information unless you require some responsible person to swear as to his opinion as to its accuracy. What will go on under this will be exactly the present system. The clerk in charge of the department will unquestionably draw up that statement and send it to the Governor. In the first instance it will be misleading because more will be put in there than will be actually required, with the hope in the first instance on the part of the friends of the Governor that he may be able at the very beginning of his term to make a financial record of pruning down and cutting down so that they can say here is what the department has requested; look at it; thirty-seven millions; but here is what an economical Governor suggests to the Legislature, only thirty millions — seven millions less. The temptation to do that will unquestionably exist.

That I claim is bad because your first-hand information is misleading. It is not based upon facts. It is not a genuine representation of the necessity of that department for the coming fiscal year and it cannot be made so unless the responsible head be compelled to swear to it. It would have another effect. It would prevent the passage afterwards of special bills supplementing any of the appropriations. Now, under your proposal you prevent the Legislature from increasing the items, but, after the budget is passed, there is no check whatever on the Legislature from passing another appropriation bill for one of the identical objects, and no official of the State will be ready to give his sanction to that special bill if it increases the cost of his department, after he has previously sworn to the necessities. Now, suppose this had been in the Constitution this winter? A bill came in here from one of the State departments and passed the Assembly with a certain amount in it for a given purpose. When it went to the Senate \$22,000 was added to it. It came back and was concurred in by the Assembly and went to the Governor and he signed it. Now if the retiring State official had, over his signature and under oath, made the statement that \$22,000 less than that was all that was necessary for his department for the next fiscal year, that "twenty-two" could not get in very well unless everybody knew exactly how it was getting there and why it was put there. It may be raised as a question that the Legislature should not be restricted in its power to simply cutting out or reducing an item. For myself, personally, I can see no difference that would make with the present system except upon a rare occasion, a very rare occasion. A Legislature has never increased any item in the appropriation bill. The trouble has been entirely with the special bills, which I will come to. The appropriation bill, as I said before, is probably over

eighty per cent. statutory and cannot be reduced. So that I do not find any fault with that. I think that is probably a good thing.

Mr. Parsons — I wish you would explain to me what you mean when you say that eighty per cent. is statutory and cannot be reduced. Supposing that the Governor was of the opinion that a department was spending more money than was needed, even though it only had the number of employees provided for in the statute. Could not he, in the budget, provide only for a less number of employees than the statute provided for?

Mr. A. E. Smith — Well, yes, I think he could.

Mr. Parsons — Cannot the Legislature do that now?

Mr. A. E. Smith — Yes. Oh, the number of employees is not statutory in any department. The number of graded employees is not statutory.

Mr. Parsons — Well, supposing that the number of secretaries or inspectors is fixed in the law. It is within the province of the Legislature now, is it not, to provide for a less number?

Mr. A. E. Smith — Well, they could do it but that is a policy that I do not think that the people of the State would be in accord with, that if the law requires the existence of an official his salary should be appropriated for. I believe that there is a Court of Appeals' decision to that effect in the case of a man that used to be Surveyor of Adirondack Lands — Colvin. The Court of Appeals in his case said that appropriations should be made for his office. What happened with him was that the Legislature attempted to dispose of his position by refusing to appropriate his salary. The Superintendent of Public Buildings was in league with the move and he assigned him to a little room on the fourth floor where they used to keep the brooms and the mops and pails for scrubbing the Capitol, and there was no window in it to the outer air. He brought up his sign and he hung it over the door and made it the office of the Surveyor of Adirondack Lands, and the Court of Appeals afterwards gave him his salary.

Mr. Parsons — How large a percentage of the appropriations, then, is fixed by statute? Is it anything more than that this department should consist of a commissioner, a deputy commissioner, and a certain number of employees?

Mr. Smith — Yes, it is. I think that more than 70 per cent. of it is statutory.

Mr. Parsons — In what way?

Mr. Smith — Well, the law provides for all these people. You take the Comptroller's office. The law provides for the number of transfer tax appraisers there are to be in each county. It provides for the number of inspectors of stock transfers that there are to be in each county.

Mr. Parsons — Supposing the Governor made up his mind that such number of transfer tax appraisers is not necessary. Could not he, in the budget — could not the Legislature now provide for a less number?

Mr. Smith — Why, no. That is just what I answered. I don't think so. I think there is an obligation, not only on the Legislature, but on the Governor, to live up to the law of the State. That would be an awful precedent for the Governor to establish, if the Governor were to come to us and say, well, I admit the law of this State says there shall be five transfer tax appraisers in New York county, at four thousand dollars a year, but I say we will only have three at two thousand.

Mr. Parsons — Can it be in this State if an economy is to be made to a department, that the law has to be changed?

Mr. Smith — In over sixty per cent. of the cases.

Mr. Wadsworth — The appropriation bill is a law itself?

Mr. Smith — The appropriation bill, of course, is a law and has the effect of law. The Court of Appeals has held that there is an obligation on the part of the State to appropriate for statutory places.

Mr. Brackett — May I, in the guise of asking a question, suggest what I think is an answer to the various questions asked? What the Speaker means by "statutory" is not that there are simply a number of officers but that their salaries are fixed in the statutes. If it should provide that a transfer tax inspector, or a sanitary inspector shall have \$4,000 a year, there can be no budget made up which says that it shall be less than \$4,000 without amending your law which fixes the amount of salary, as well as fixes the number. In other words, simply by appropriating a lesser sum does not change the law. The statute which fixes the salaries can not, in the nature of things, be amended by the passage of an appropriation bill at a lesser sum. The Legislature may, I suppose, provide for a lesser number, by appropriating simply for a certain number.

Mr. Parsons — That is what I supposed was the law, and I supposed that so far as ordinary employees were concerned, the law provided that such number should be employed as the appropriation should provide for.

Mr. Smith — Yes, that is true.

Mr. Parsons — That is, they may provide for a certain number, which is less than the number named in the statute, but the grades shall receive certain salaries.

Mr. Smith — Yes.

Mr. Parsons — If that is so, it would be always in the power

of the Governor and it is in the power of the Legislature to economize by reducing the number of offices, in the manner of making appropriations.

Mr. Smith — That is so, and the Legislature did that.

Mr. Stimson — Isn't this the point, Mr. Smith, that the law that you speak of as fixing the salaries is the appropriation law?

Mr. Smith — No.

Mr. Stimson — Isn't it in a great many cases?

Mr. Smith — No, the statute creates the places and fixes the salaries.

Mr. Stimson — In a great many cases, isn't it a fact that the appropriation law itself provides for the employees and the salaries, regardless of any other law?

Mr. Smith — Yes, but this is the point: All the high salaried men are provided for by statute law. It is the stenographer and typewriter that gets \$720 a year that you can economize on. That is the point.

Mr. Stimson — There are a great many of those.

Mr. Smith — Oh, yes, there are quite a few of those. There are some departments which are fixed absolutely by statute. You cannot go to the judiciary article of the appropriation bill and get a dollar out of it. The only place you can reduce the judiciary item of the appropriation is in the maintenance of the libraries. Everything else is fixed by law.

Mr. Wickersham — Is there anything to prevent the Governor in making up this budget recommending a reduction in the number of places, or in the rate of salaries, so that the suggested budget by him would be an indication to the Legislature of the direction in which economy might be practiced.

Mr. A. E. Smith — Yes, he can do that now.

Mr. Wickersham — Yes, but in connection with the budget it would be more effective, in that it would call the attention of the Legislature more distinctly to it, would it not?

Mr. A. E. Smith — Why, no more strongly than it is called at the present time. The Governor this year said: "The increase, on an unprecedented scale, in the number of State officials and employees, and the reckless increase in salaries in nearly all departments during the last four years are explainable only by the existence of a deliberate plan to fasten the control of a party upon the State by the use of a vast amount of official patronage. The present condition of the State's finances demands an immediate and drastic revision of the State's pay-rolls and requires that unnecessary offices, departments and commissions shall be abolished. Service should be rendered to the State on the basis of efficient and economical private employment," etc. And he goes

on and mentions several ways he expects to do that. But before the session was over he attempted to defeat it himself.

Mr. Wickersham — Of course if those observations were in connection with a provision in the budget recommending a reduction of ten employees in a certain department, or a reduction of a certain scale of salaries, it would be much more pungent and pointed?

Mr. A. E. Smith — I am not quarreling with that point; I am only insisting that if that is to remain, that the information from the head of the department be put under oath, because you won't get any department head to agree to let any of his help go. Unless you make him swear he needs every one of them, he will stand for that all the time, because he is living in an atmosphere of that kind. The fiscal clerk will, from the moment he comes in, start in to impress upon him the necessity of having all these officials and that they all have their duties to perform. As Chairman of the Ways and Means Committee I heard how the State's business was to fall into decay if three or four men did not get a raise in salary that year.

Mr. Wickersham — I can quite appreciate the force of what you say, because I have been in just that position myself; but if the department head is surrounded with this atmosphere and is so persuaded by his fiscal clerk, don't you think that persuasion will find expression in the affidavit, that he believes the number of clerks which the fiscal clerk has impressed upon him he ought to have are required in his department?

Mr. A. E. Smith — No; no. There is a great difference between saying to a man, "Sign this," and then saying to the same man, "Swear to this." A man will readily certify to the necessity of five typewriters, but if he must swear to their necessity, he will look into it a little bit. That is the point.

A Delegate — I don't agree.

Mr. A. E. Smith — Well, it is a matter of opinion. You make him swear when he pays the money out; why not make him swear before he gets it?

Mr. Wickersham — Was not it one of the most fruitful sources of prosecution whenever there has been a way of enforcement — the prosecution of officials who sign and swear to statements when they knew nothing about them, but signed and swore to them on the say-so of a subordinate? There has been a recent example of that kind in the Greater City of New York.

Mr. A. E. Smith — As to swearing as to his information, to the best of his belief, you never could convict him for that, even if it is not right. The only thing I say it would do is to compel them to give more attention to it. The public hearings on this subject:

I doubt if that is going to have any effect. Who will be present at this public hearing, just exactly what man before the State Board of Estimate? Nobody will be there but the man seeking the appropriation and while that purports to give publicity to it, it will not do it. "On or before the first day of February he shall submit to the Legislature a budget containing a complete plan of proposed expenditures and estimated revenues." That is the present law and that is done at the present time and the estimated revenues can only be based upon revenues of the year before, that is really all that anybody can hope to estimate; it is the only ground that they have got to work on, just what happened in that same line a year before and that is contained in the Governor's message every year. Now, the appropriation bill or the budget, the minute the Legislature approves it, it automatically becomes law and requires no further action by the Governor. Now, I said in the opening of my remarks that the budget as we understand it, or the appropriation bill, would carry only one-half of the appropriations. This year it would have been thirty-two millions of the sixty-three millions that were appropriated. You say here that neither house shall consider — That means that they cannot even have a committee meeting on the other thirty-one millions until they have passed the budget. Now, in order to have plenty of time, and the time the Legislature would require to deal with the thirty-one millions that I speak of, the appropriation bill must pass before the 1st day of April, the session to last until the middle of May. It must pass before the 1st of April. Now by leaving in here the power in the hands of the Legislature to initiate appropriations, after that, what becomes of that first budget? Supposing we had the condition that obtained here this winter, where every single department of the government was changed around. Why, by the 1st of May you would not know that budget if you saw it. Where would it stand? Probably Chapter 2, or 3, of the Laws of 1915, and by the 1st of May there would not be a shred of it left. Where would the taxpayer then be when he wanted to find out what the budget for 1915 was? Instead of being able to turn to one bill containing all the expenditures, he would have to read the session laws through to find out what happened to its afterwards by subsequent legislation. Supposing on the 1st of March your budget calls for three State Tax Commissioners at \$7,500 apiece, and three deputies, at \$5,000 apiece, and three secretaries. About the 20th or 25th of April the Legislature, in its wisdom, or maybe upon the request of the Governor, may see fit to reduce the Tax Commission to one member. As soon as that bill is passed you have to amend the budget, if it had only just become a law. Now I cannot offer any remedy for that — I am going to be very frank

about it. I cannot offer a remedy for it because if I attempt any remedy for that I am going to foreclose the Legislature from dealing in any way, shape or form, after the budget passes in the first few months, with the structure of government, so that they would practically be reduced to amending the Penal Code and the Civil Code and such other laws as would not require any money to enforce or any additional officials to enforce them. Now about the 15th of April if the Legislature decides to put new duties upon the Commissioner of Labor or upon the Comptroller, or upon the Superintendent of Banks, or upon any other of the officials, what must they do? You cannot send them out to do a job and give them nothing to do it with. You have got to make an appropriation. That comes afterward in a special bill. What then happens to your budget? Again I say, you must go all through the session laws to find out just what was the record of a particular administration in making provision for the support of government.

Mr. Parsons — The gentleman has stated that there would be thirty odd millions of appropriations which would not be covered by this budget. I do not find in the records of previous years any such sum. Take the appropriations for the fiscal year ending September 30, 1914, which are found in the Comptroller's report for this year. The appropriation bill for the preceding year was \$29,518,069.25; the supply bill, \$2,201,482.05. The special bills — I understand by that that it means construction, does it not?

Mr. A. E. Smith — No, not necessarily.

Mr. Parsons — I mean, some items would be considered as construction?

Mr. A. E. Smith — No, a good deal of it is construction and improvement of existing structures.

Mr. Parsons — Now, the special bills, the total is \$16,895,442.-87, but of that all except \$8,849,193.34 is for canal fund appropriations and the sinking fund installments, so that those special bills really amount to only \$8,849,193.34, and included in those are the construction items. Now this proposed amendment intends that in the budget there shall be included all the construction and improvement items.

Mr. A. E. Smith — It does not say so.

Mr. Parsons — It says "all the financial needs."

Mr. A. E. Smith — Oh, no, it says nothing of the kind; "the needs of a department, classified according to relative importance". Just the needs of the department.

Mr. Parsons — Well, every construction — take the Education Department. If it needs additional construction, it is a need of the Education Department, is it not?

Mr. A. E. Smith — Why, no, not under the system that has been operating here. You are not changing the system and when I get down to the private and local bills I will show you why you are not changing the system.

Mr. Parsons — How much did the private and local bills amount to?

Mr. A. E. Smith — Why, about fifteen millions.

Mr. Parsons — The private and local bills?

Mr. A. E. Smith — Yes. The private and local bills are of a kind that the Governor will not take responsibility for in the first instance.

Mr. Parsons — Well, will the gentlemen point out to me where it is provided that local bills amounting to \$15,000,000 appear in the 1914 appropriation?

Mr. A. E. Smith — Why, the whole supply bill has practically been a private and local bill.

Mr. Parsons — But the supply bill is only something over \$2,000,000.

Mr. A. E. Smith — That was in 1914.

Mr. Parsons — Well, in 1915, the supply bill was \$5,090,-231.42,— not \$15,000,000.

Mr. A. E. Smith — When I say the special bills, I mean they all run up to \$15,000,000. Now I regard the maintenance and construction of the highways, the maintenance item of the highways an item that would be under dispute and that would come in afterward. Now let me show you why that is so. The Governor in his special message said to the Legislature on the 24th of February, dealing with the finances of the State, in which the celebrated \$18,000,000 came into play, that the State is spending \$100,000,000 in the improvement of so-called State highways, and in order that the property of the State shall be conserved it has been necessary to expend out of the treasury each year a large sum of money for the repair and maintenance of the highways which have been improved. Last year over \$2,000,000 was spent for that purpose, this year \$5,000,000 is asked, but if the last appropriation is not exceeded we will be required to appropriate \$2,000,000. What did we appropriate? Four million four hundred thousand dollars. Now that was in face of the statement that was made and not contradicted that the present organization of the Highway Department was unable in one year to spend more than \$2,000,000, and the statement was made and never contradicted that the State Highway Department, with the money that they had left over and above that \$2,000,000, bought stone and oil and stored it away outside of the city of Buffalo for the

repair of the roads for the next year, notwithstanding that \$4,400,000 was appropriated for that item. Now that \$4,400,000 is what I speak of, it will be in such special bills because no Governor, after being in office a month or two months, would undertake to say whether it requires two, four or more millions, but he would let the Legislature decide that and he would deal with it himself afterward.

Mr. Parsons — But it would be in the statement of the department as some of the needs of the department, wouldn't it?

Mr. A. E. Smith — Yes, it will be; no doubt about that, and if you leave it to the Highway Commission it would be up to the top figure.

Mr. Brackett — May I file a caveat as a point of order —

The Chairman — Mr. Brackett — I don't know of any such practice, but I have no doubt permission will be granted.

Mr. Brackett — If the questioning and argumentation, back and forth under the guise of argument, which greatly delays the game, continues, I am going to hereafter make objection.

Mr. A. E. Smith — Now, I want to pass on to Section No. 21. The Appropriation bill. "No money shall ever be paid out of the treasury of this State, or any of its funds or any of the funds under its management, except in pursuance of appropriation by law." Now, stop there. Now, one of my proposals would amend that to read this way: "No money shall ever be paid out of the treasury of this State or any of its funds or any of the funds under its management" — and I add the words "nor any obligation incurred except in pursuance of an appropriation by law." What I am seeking to do by that is to prevent the department heads and bureaus of the government from incurring the liabilities where no appropriation has been made for it. That is the present law, it is the State Finance Law, but nothing ever happens about it for the simple reason that the appropriation bill when it passes legalizes that action. The reason why I want it in the Constitution is that there will be the same safeguard around the highways where an obligation has been incurred with no appropriation as there is now about the payment of money of the State funds without appropriation. Now, for instance, I will show you exactly what I mean. Take the supply bill of 19— yes, page 9, under the heading of the Civil Service Commission, for deficiency in appropriation for actual and necessary traveling expenses of the commission, its secretary and other employees of the commission, in the performance of their official duties, \$1,500. Now, that was incurred without appropriation. What happened? That department owes it to somebody, there is nothing for the Legislature to do but to pay the just debts of the State and then give it

the expression of law by writing it into one of the bills and, as Mr. Wadsworth says, they have the effect of law and that legalizes their action. Now, another illustration — it runs all through the bills — the State Probation Commission, for books, stationery, printing, supplies, postage, etc. — my memory happens to be keen on this item — it was denied by the conference committee of 1914, and they were told by that committee that they had enough money for that purpose. They went on and incurred the indebtedness just the same. They came along next year and had it legalized by the appropriation bill — page 54, lines 10 to 13 of the bill, as a deficiency in the appropriation for expenses of delegates to the National Prison Congress. They asked for that, apparently, but did not get it, but they went on, and attended the Congress, and came back the next year under the head of the deficiency. Now, there could be no deficiency in that if it was ever appropriated. The trouble is it was never appropriated and it was afterward called a deficiency in traveling expenses — and that thing will go on continually in this State unless you put into the Constitution that no obligation shall be incurred except in pursuance of an appropriation by law. Now it is going to have another good effect; it will stop the increasing of salaries in departments until the Governor and the Legislature can act first —

Mr. Cullinan — Doesn't what is known as the Higgins Law prevent the incurring of the expenditure to which you call our attention?

Mr. A. E. Smith — I so stated, Judge, but the great trouble is that this legalizes the violation of it because this then becomes law. I don't know, if it is in the Constitution I presume somebody could attack the legality of the enactment. That would be the difficulty. Now I come down to what I regard as probably the most important thing about the bill, in Document 32. The Committee has spoken strongly about log-rolling methods in the Legislature to secure appropriation bills. On one page they deal with the manner of a passage of a bill in the Senate with only two members voting against it, but you haven't done a single thing to cure that. There is absolutely no cure for that. These special bills will never be in the budget; they will be in the class of bills that you refer to beginning on line 17 of page 3, neither House shall consider further appropriations until the appropriation bills sent by the Governor have been acted upon. Now after that is over and the fixed charges of the State are estimated, the budget or appropriation bill is finished, then comes the log-rolling all over again, and you haven't done anything to prevent it. You can do something, it can be prevented. In 1894, there was written into the Constitution Section 20 of Article III, and it reads as

follows: "The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public money or property for local or private purposes." That is the present Constitution. There is no question as to what that means. The courts, in their decisions, have defeated its purpose, because they have held that while an appropriation may mainly benefit a single section, it may, at the same time, benefit the whole State. They have defeated its purpose. Of course, every dollar spent in this State upon an improvement, it would be difficult to say it did not benefit the State; but it mainly benefits a single locality, and it was the intention of the Constitution framers in 1894 to require that class of bills receive a two-thirds vote in order to pass. I propose a constitutional amendment to-day. I say: "The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating public money or property for local or private purposes" and, now, I add this "or for State purposes when less than the whole State is to be directly or mainly benefited by the expenditure of the moneys appropriated, except appropriations for the repair and maintenance of the canals, or the support and construction of State institutions." The reason why I make the exception is that I hold the canals and their maintenance and repairs and their construction to be a State-wide purpose even if a single locality may be benefited by it, and I maintain that the construction and the equipment and the care of the institutions for the insane is a State-wide purpose, even if the construction of one building or a set of buildings in a single locality may be deemed by some — I won't imagine that there are some who do — but it may be deemed by some to be mainly benefiting one section.

Mr. M. Saxe — Merely for the purpose of an explanation. Why does the gentleman exclude highways from that definition?

Mr. A. E. Smith — Well, because there is no specific appropriation made, nor can there be any made for any given highway. That is the reason. There is no occasion for including highways because the Legislature does not appropriate a sum of moneys to improve the highways in Herkimer county or in Orange county. That is apportioned and must be apportioned under the referendum by the State Commissioner of Highways. Now, that is the class of bills that all the log-rolling takes place on. That is the class of bills that the greatest possible pressure, pressure of all kinds is brought upon the Legislature to pass and upon the Governor to sign, these private local bills. In the Governor's special message to the Legislature, he said, that the present condition of the finances of the State was such that no new work should be undertaken. "Appropriations for the starting of new activities

can wait. The extension of present activities can wait. In most cases additions to existing institutions can wait. Many other propositions, desirable in themselves and justifiable under other conditions, can wait and should be compelled to wait." Notwithstanding that, notwithstanding the fact that it was presented to the Legislature that we were looking squarely in the face of an eighteen million dollar direct tax, the Legislature went right on, passing special, private and local appropriation bills, and the Governor signed a great many of them. Now, let me give you an idea of what I mean by the kind of bills which require a two-thirds vote on. "An act to provide for the reconstruction of the old portion of the Potsdam Normal and Training School." Now, education is a State-wide purpose; there is no doubt about that. The reconstruction of a normal school in one section of the State, in Potsdam, in St. Lawrence county, it seems to me, is rather local in its nature. I picked that out first because that is the best one of them all. That is the one that I probably would stand for first. Here is one that, that to my way of thinking, is a monstrosity; an act that commits the State to an initial expenditure of \$150,000 for straightening out Olean creek. That is purely a local bill, and by its express terms, to show that it is local, the city of Olean proposes to expend as much as the State does for the same purpose. They acknowledge by their own bill that it is a city purpose, for the city of Olean; they "fifty-fifty" it with us. Now what do they do for the protection and the safe-guarding of the taxpayers in Olean? For their \$150,000 they propose a referendum to the taxpayers; but for our \$150,000, that is immediately available. The minute the taxpayers of Olean say "yes," we have to say "yes." Now that is a great public improvement in the interest of a taxpayer over in Flatbush or down in Brooklyn or down in Richmond. Everybody can readily understand the great State necessity that exists for straightening out that creek. If that creek is not straightened out, then property on Manhattan Island will depreciate! Unquestionably that bill is a bill that comes under Section 20 of the old Constitution and should require the assent of two-thirds of the members of both Houses. Here is a bill making an appropriation to reimburse Philip Becker for money that he paid to the State for a grant of land under water. That is a private bill. I haven't any quarrel with "Phil"; it probably is due him, but it is a private bill. "To provide for the construction of a bridge over the Barge Canal in the village of Lyons, and making an appropriation therefor." The history of some of these bills should be known in order to appreciate the abuse of this special legislation. Some of these bills have been introduced so

often that you do not have to introduce them any more; you can leave them up in the back of the chamber and they will find their way into the bill-box themselves. Here is one making an appropriation and a reappropriation for continuing and completing the construction of a bridge over the Black river and the Moose river at Lyons Falls. Here is another to provide for the construction of a foot-bridge on the north and south walls of Lock No. 3 of the Cayuga and Seneca canal. That is absolutely a local bill. It is either a local bill or it is a part of the canal construction. It cannot be anything else. If it is local, it should be paid for by the locality; if it is a part of the canal, it should have been paid for out of the canal money. There is no possible way that you can justify the payment by the taxpayers of the whole State. Here is one to provide for lowering another bridge — one of them is too high.

Mr. Wadsworth — Did they pass?

Mr. A. E. Smith — They became laws.

Mr. Wadsworth — All of them?

Mr. A. E. Smith — All of them, all except the Lyons Falls bridge. That has only been introduced three times; that is not old enough yet. That is one that has not reached the proper age; it has not ripened. Here is one to provide for the removal of a farm bridge over an abandoned section of the canal — \$12,000. The small amount of that indicates clearly that that is a special, local, private bill, because if the State was to adopt the general policy of taking down all bridges over the abandoned canal and filling the place up with concrete, it would cost a couple of million dollars. In this particular section of the State, in this one place, for the benefit of the farmers of this particular community, a wood and iron bridge is to be removed and a solid concrete roadway to be built right across the bed of the old canal. That is purely a local bill and it is interesting — it just occurs to me — at the time of the discussion of it the man that introduced it said that it was put there to let the farmer get to the other side quicker. He had to go a couple of blocks if that was not done. A bill to provide for the construction of a bridge over the Oswego river at Minetto — purely local.

Mr. Cullinan — I beg pardon. I will answer that later.

Mr. A. E. Smith — I know what you are going to answer; I know, Judge. I have heard the answer to that. It is a local bill, all right, and when the Judge is answering it let him give me some reason, some good reason why the taxpayers of Greater New York, particularly, ought to pay for that bridge.

Mr. Cullinan — I will answer it.

Mr. A. E. Smith — All right. Here is another one over the Mohawk, between the city of Schenectady and the village of

Scotia. That bridge has stood there for years, and the village of Scotia has been collecting tolls on it and keeping all the moneys themselves, and now that it is worn and broken up and battered away, after they have disposed of all the funds that they have collected from all the passengers that have gone over it, they want the State to replace it. Here is one to provide for the repair of the canal wall feeder on Main street in the city of Oneida. Now that is either local or it belongs in the canal fund. That was signed and became a law. That bill should require a two-thirds vote. Here is one to provide for excavating and deepening the harbor and channel and the entrance thereto at the foot of Canandaigua lake in the county of Ontario and to repair the pier and the breakwater. That surely is a local bill. Here is one that is certainly the prize one. This is to provide for the construction of a district school building by the State on the grounds of Great Meadow prison for the use of the school district in which such grounds are located, and making an appropriation therefor. There is a local school building.

Mr. Wadsworth — Did that pass and was it signed?

Mr. A. E. Smith — It was signed and became a law. That is a local school building, built by the taxpayers of the whole State. Surely that is a local bill if anything is.

Mr. Wadsworth — What was the amount appropriated for the school building?

Mr. A. E. Smith — \$20,000.

Mr. Wadsworth — How much?

Mr. A. E. Smith — \$20,000. Now the point I am making is that we are not doing a single thing to cure that, and that is the sorest spot in our whole financial system to-day; that is, it is the one weakness above all others. These bills are not merely introduced and passed; they became laws.

Mr. Schurman — Is it not true that Mr. Wickersham has introduced a proposed constitutional amendment dealing with private and local bills?

Mr. A. E. Smith — Yes, but these are not considered private or local bills. I am trying to make them private or local bills. I believe that it was intended that they should be, but they are not so considered to-day because of the court decisions.

Mr. Brackett — Does the gentleman from New York, Mr. Smith, mean to tell us that the Governor by this proposed amendment is given the power to make up a budget, when some Governor actually did sign the Comstock Schoolhouse Bill?

Mr. A. E. Smith — Yes, sir.

Mr. Brackett — Has the gentleman from New York any opinion as to whether, under such circumstances, the Governor ought to make up a budget for the State?

Mr. A. E. Smith — That Great Meadow Prison School Bill became Chapter 442 of the Laws of 1915. Philip Becker's Reimbursement Bill is Chapter 698; the canal bridge at Yorkville, Chapter 584; the farmer's bridge is Chapter 702; cleaning out Fulmer's creek is Chapter 709.

Mr. Brackett — Mr. Chairman, the gentleman has not answered my last question. Would not the Governor who signed such bills be apt to include them in the budget?

Mr. A. E. Smith — No; no.

Mr. Brackett — Why not?

Mr. A. E. Smith — Because his interest would be in keeping the appropriation as low as possible. No question about that. He won't put any item of that kind in the budget.

Mr. Schurman — Don't you think that you might be required to embrace those things in the budget if, on the second line of page 2 in the proposed bill which we have from the Committee on Finance, you added after "shall revise such estimates" that such department made "according to his judgment," "and he shall be required to provide therein for all the financial needs of the State?"

Mr. A. E. Smith — Well, yes; that would do it. It would be done easier by taking out everything on page 3 from line 17. Of course I am not going to be responsible for what will happen to the State of New York if that is adopted.

Mr. Austin — In view of the question of the delegate from Saratoga and the obvious meaning conveyed by it, may I ask whether you consider the act establishing the Saratoga reservation a private or a local bill?

Mr. A. E. Smith — I regard it as a State-wide purpose. Because I voted for it.

Mr. R. B. Smith — Does Mr. Smith recollect that it got a hundred votes and better?

Mr. A. E. Smith — I do not recall it.

Mr. R. B. Smith — I do.

Mr. Brackett — One hundred and three, accurately.

Mr. A. E. Smith — Now, I have gone as far as I think it is necessary to go on that subject, to convince this body that they should put in the words that I suggest: "or for State purposes when less than the whole of the State is to be directly or mainly benefited by the expenditure of the moneys appropriated."

Mr. D. Nicoll — May I ask a question? Why wouldn't all your objections be met if, instead of striking out all on page 3, as you now suggest, you provided that as to these further appropriations as to the budget, they should not be made except by separate bills, as the amendment now reads, and with the further safeguard that

they should require the assent of two-thirds of the members elected to each branch of the Legislature?

Mr. A. E. Smith — No; that would be too much power; it is giving too much power to the minority. The minority could hold up the whole constructive program of the majority, because they could stop any bill that made an appropriation for carrying out its purpose, and under the plan suggested here, all such bills will have to carry appropriations, because early in the session the budget will have passed, and I don't believe in giving the minority of a body the power to obstruct or hold up legislation of the majority. That would not be in keeping with our ideas of good government.

Mr. D. Nicoll — But if the appropriations are necessary, the minority would yield.

Mr. A. E. Smith — They may not. Supposing it should happen to be the kind of a bill that would enlarge, for instance, the Court of Claims, creating two new judges at six thousand apiece. That would be an appropriation of which the minority could say, "No, we don't want the two judges." I only want this two-thirds to apply to what the people intended it should apply to twenty years ago — local and private bills; and the language that I use in my proposed amendment is taken right from the Court of Appeals where a section is mainly or directly benefited. That is the point. My bill, No. 343, found its way into the form of the amendment that I suggested to Section 21, which I think there can be no possible objection to. That is the one that prevents any officer or any department head from incurring an obligation without an appropriation. So that summing it all up so that I may conclude, the fault that I find with it is that it simply gives constitutional authority to the present law and the present practices. With the exception of taking away from the Legislature the right to increase an item or to add an item, something that they seldom do, as I said before, they have the same powers. It contains no method for ascertaining facts. It is just an estimate. I seek to cure that by the oath; and its principal defect is that it does not go to the great body of fluid appropriations. Those are subjected to change from year to year and can be made to a certain size to meet certain political conditions, if you please. It makes no provisions for any control over such appropriations whatever. They are thrown into the Legislature to be acted upon just as they are at the present time, after the passage of the budget and without my amendment requiring the two-thirds vote all the private and local bills, you have the whole system open to the same log-rolling that has taken place in the past; open to the same criticism that has taken place in the past; and I hold again now, and I claim that I am exercising

only plain common sense when I say that no Governor will put this character of bills into the appropriation bills, in his estimates, and certify to it that the needs of the State will require it, and the same situation will exist as before. You have left it open to the same abuses, and you have left it open to the old-fashioned criticism, and the only way to cure it and the only way to do away with that criticism is by the adoption of my amendment, and if you do not adopt it, you have only completed about one-third of the job.

Mr. J. G. Saxe — I wish I had some of the eloquence of Mr. A. E. Smith, but I hope the Convention will bear with me for a very few minutes while I briefly state my reasons why, with the exception of one amendment which I am going to propose and possibly with the exception of some amendments which Mr. Smith has presented — I shall enthusiastically support the proposed amendment of the Finance Committee. I have already spoken before the Finance Committee at great length in support of my proposed amendment, No. 470, virtually all of the ideas of which are incorporated in this proposed amendment, and I think I can say what little I have to say to the Convention in five or ten minutes. The only thing in the Constitution to-day, in respect to a budget, is that clause of Section 4, Article IV of the Constitution, which provides that "The Governor shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall deem expedient." That is all there is in the Constitution to-day, and over against that this proposed amendment provides for the three elements which constitute a fair budget scheme, namely, that we shall have responsible estimates of expenses; that there shall be financial statements of current resources and liabilities, and that there shall be submitted at the same time such propositions as the budget-making power has for making revenues. What is the present system which we are seeking to correct? The custom has always been that at the opening of the Legislature the Governor submits to the Legislature a so-called message on the condition of the State and such messages in years past have varied from the particularly able message on the subject of finances which was submitted by the Governor in the year 1914, to the messages of some of the other Governors which have been nothing more nor less than political speeches. And then, what happens? No member of the Legislature, by any chance, ever takes any further interest in the question of the appropriations of this great State, unless he be a member of the Finance Committee of the Senate or of the Ways and Means Committee of the Assembly. And how is the bill passed? At the very last moment. A jumbled bill, not

printed, goes rapidly through the House under an emergency message of the Governor. I am one of those who are strongly in favor of the retention of the emergency message as a necessary instrumentality of government for winding up the sessions, but it has always been misused in connection with appropriations, and that is one of the things which the budget scheme will do away with, without curtailing a proper use of the emergency message. Under the new system instead of this general report followed by silence and then by the dark lantern appropriation bill at the end of the year we shall have the estimates as estimates, coming to the Legislature with the bills proposed by the Governor. A real responsibility is placed upon the Legislature which has the power to summon before it the heads of departments, and it has the corrective power by which it may reduce the expenditure. The question was asked me in several different forms in committee: "Well, what will happen if the Governor should have some particular head of a department with whom he is not satisfied; could you get him to recommend that appropriation?" That is taken care of in this bill, as it was in mine, by providing that after the appropriation bill has been duly approved and has become the law of the State, the members, if they deem advisable, may offer their own bill.

I don't think it is necessary for me, after the very comprehensive speech made by the Chairman of Finance this morning, to recapitulate the various items of this bill, but I do want to say in connection with this procedure which we have before us to-day whereby the general bill must go in first and thereafter there come in the members' bills which so frequently take the shape of these miserable special bills which Mr. Smith has alluded to, that a great cure is found for those bills. Those bills under the existing system run down to the Governor at all times during the session, and Governor Whitman held his hearings this year upon the desire to reduce expenditures in the State. He had already signed ten millions of appropriations. They came down to him before the thirty-day period had even arrived and if we provide that the members' bills, which I understand contain supply bills as well, if it is understood that they cannot be introduced by a member of the Legislature until after the appropriation bill is finished I really think we have found a substantial cure in that provision alone against the character of appropriations to which Mr. Smith has referred.

Mr. A. E. Smith — Will the gentleman explain that to me? I would not have talked so long if I could have seen that.

Mr. J. G. Saxe — Well, the general effect of Mr. Smith's argument, as I understood it, was that after all, after we examined

this system and examined the new system, the general practical effect would be about the same. Now, take these supply bills to-day: There is no public attention directed to them at all; all we have is confusion. We have the initial confused message of the Governor on the condition of the State. He may write an intelligent message, although it is pretty difficult for any Governor to do that when he first comes into power and has not had any time at all to survey the situation. We ought to have a complete plan and the estimated revenues as provided on page 2 of the Committee's bill at line 9, and on page 5 of my proposed amendment. That is the general appropriation bill and the general supply bill, as I understand it. Public attention is riveted upon the bill, and then, after that has become law and the people all have the idea that in the particular year, 1917, the items for the State expenditures are going to be \$45,000,000, what are the people going to say to the \$20,000 item and the \$30,000 and the \$500,000 items introduced without the sanction of the Governor as special bills after the appropriation and supply bill has become a law? That is the answer I make to Mr. Smith.

Mr. A. E. Smith — Why would not the fact that the Governor certified to the Legislature this year that we had to have an \$18,000,000 direct tax, why would not that stop the Legislature, and why, incidentally, didn't it stop him? Every one of those bills that I read off here were passed in the closing week of the session.

Mr. J. G. Saxe — For the simple reason that the message this year was a political speech instead of a scientific budget containing a careful analysis of the items.

Mr. Wagner — Are you, by this proposal, going to change human nature, going to get a superhuman man in the Governor's office?

Mr. J. G. Saxe — We are going to get a system for a scientific budget instead of a political speech as to the needs of the State. That brings me to one other point to which I want to advert.

Mr. Parsons — In this article does not the language in lines 8 and 9 on page 1, namely, that the heads of the departments should submit to the Governor itemized estimates of appropriations to meet the financial needs of such department — isn't that broad enough to include not only the general appropriation and supply bill but also the construction bill?

Mr. J. G. Saxe — Certainly.

Mr. A. E. Smith — Why, no. That is absolutely not so. That is the very point —

Mr. J. G. Saxe — Mr. Chairman, I will not yield to an incidental debate, but I am very glad to express my opinion to Mr.

Parsons that insofar as it relates to a necessary expenditure of the Department it ought to come into the budget when it is first introduced, and if the head of a department wants two or three other millions for highways he must get some member to introduce it at a later date, when the people will see that it is an increased item and not a general item which the Governor has approved.

Mr. A. E. Smith — Under that scheme, would the \$20,000 for the Great Meadow school be under the general appropriation bill?

Mr. J. G. Saxe — Certainly not. It would come along after the general bill was introduced, if the member had the temerity to introduce it.

Mr. A. E. Smith — Where would the three hundred thousand dollar item for the creek up in Olean come in anybody's estimate?

Mr. J. G. Saxe — I have already answered that.

Mr. A. E. Smith — Where is the cure?

Mr. J. G. Saxe — The cure is found in the fact that the general appropriation and supply bill of the State would become a law before these special bills came in.

Mr. A. E. Smith — How would that cure the situation that neither the Legislature nor the Governor refrained this year from passing these bills after they had both agreed an eighteen million dollar tax was necessary to continue the government?

Mr. J. G. Saxe — The cure would come through a scientific budget system taking the place of the existing confusion. Now one final word on the amendment which I hope the Finance Committee will accept. In my Proposed Amendment I thought it only fair to provide that the Governor and heads of departments should appear before the Legislature to explain their estimates if they were so inclined. The language which I used in that respect is to be found on page 2, line 17, of my Proposed Amendment "at which time the Governor may have the privilege of the floor to explain estimates and items of appropriations requested and to answer such questions," etc. The Committee in their proposition have gone rather beyond my suggestion and the Committee provides that the Governor and heads of departments and the Comptroller shall have the right and it shall be their duty when requested by either House of the Legislature to appear and be heard in respect to the budget during the consideration thereof and to answer inquiries relevant thereto. The government of this country and of this State is divided into three coördinate jurisdictions and if I correctly understand the law neither the Governor nor the judiciary nor the Legislature are, any one of them, subject to the jurisdiction and control of the other or to subpœna by the other and while I have no objection to providing in our Constitution that the Legislature may summon before it the heads of

departments and if it will, the Comptroller, to cross-examine and heckle these heads of departments and the Comptroller, I have the most emphatic objection to any provision in our Constitution that the Legislature shall have the power to summon before it the Governor of this State so that it may ask him questions, and my motion — and that ends what I have to say — is that on page 3, line 5, of the Committee's Proposed Amendment the words "their duty" shall be stricken out and that there be substituted in place thereof "the duty of such heads of departments and the Comptroller."

Mr. Cullinan — Gentlemen of the Convention, just a few words from the standpoint of one who has been at the head of a department asking for appropriation, and to answer certain questions of the Chairman of Finance. I had the honor of being connected with the State Bureau of Excise for about ten years, and, notwithstanding all that has been said by those who know little about the State government and who generally speak the most about it, I found that it was anything but an easy proposition to get money that that department was going to use. Now, in answer to the question of the Chairman of Finance, all of the money used by that department, for illustration, an expenditure of \$300,000, is purely statutory. For instance, a department is created, a commissioner with so much salary, so many deputies in Albany, so much salary for each one; deputies in New York, Buffalo, Rochester and Albany, so much salary; so many stenographers, so much salary; so many attorneys, so much salary; and each one specified unless there were an attempt made to standardize salaries, each clerk substantially his salary named in the bill creating the law. Now after that is done this is what operates each year, and, let me to say to the gentlemen who have been connected with the Legislature and have not been connected with the departments, that brave men lived before Agamemnon and that an intelligent and economical and effective method was employed by the Legislature of this State and its representatives on the Ways and Means Committee and on the Finance Committee and by the Governor to obtain appropriations just for the items that were absolutely necessary and nothing more.

Now here is the way it worked in practice: The chairman of the Ways and Means would call upon the department and say, Mr. Commissioner, you spent in this office last year so many hundred thousand dollars. What do you want for the next year? If there is an increase give your reasons for it. The Commissioner prepares his budget. He hands it to the chairman of the Ways and Means. The Ways and Means goes up to the Civil Service

Department and says, Will you give me the list of the officials of the Excise Department, of every clerk, every subordinate, and the salaries that are being paid? He checks the budget of the State Commissioner of Excise in that way. In addition to that he goes down to the Comptroller's office, and he says, Mr. Comptroller, turn to the Department of Excise. Will you look over your books and see if that is a correct statement of the amounts that are paid to each officer, official and employee of that Department? There is another check, and when that is done he usually and he did several years ago, go to the Governor of this State and submit that entire statement for the purpose of obtaining his informal approval and, as Speaker Smith has said, the trouble is not with the departments, although it is generally supposed that something is wrong with them; they do sometimes ask for additional appropriations, but every department has got to go through this fire. The vetoes of the Governor do not come from department appropriations. They come from the large special bills to which the Speaker has called our attention and I believe that the State of New York, as far as the departments are concerned, has as intelligent and economical and effective administration as any State in this Union or the national government.

Mr. Parsons — Will you explain why it is that the appropriation bills for the Excise Department no longer provide for appropriations in the manner you mentioned?

Mr. Cullinan — I am not speaking about to-day. I am speaking about as they have been. Now, in connection with the efficiency of the Legislature as far as regards the debt of the State to which the Chairman of the Finance Committee has called our attention, I want to disabuse the minds of some of the gentlemen of this Convention from the fact that they believe there has been a general license and so much log-rolling that the people of the State are objecting to plundering in an excessive degree. Now, going back a few years ago; beginning, say, with 1890, it was discovered that we were levying upon the real estate of the State of New York annually somewhere between twelve and fifteen million dollars payable out of the real estate of property that could be observed, and not payable out of personal property which could be hidden and not found. The Governors of the State at that time, the members of the Ways and Means Committee of the Assembly and the members of the Finance Committee of the Senate and the heads of those departments — you will remember who they were — at that time concluded that it was a reflection upon the State of New York that we should be levying a tax upon real estate when our neighboring State of Pennsylvania was paying its large bills and disbursements without levying a dollar

upon real estate. Gentlemen, by reason of attention, careful attention by the members of those different committees and the Governors of the State at that time, a system of economy was produced, so that when it came to the year 1902, and from then down to 1912, no levy was made upon the real estate of the State of New York for the support of government — one of the greatest pieces of financial administration to the credit not only of this State, but it cannot be equalled in any State in the Union or in the national government.

Mr. Stimson — Is it not a fact that between those years the current expenses of government rose from about \$17,000,000 a year to about \$34,000,000?

Mr. Cullinan — Well, that is being done, — it is to the credit of those who were connected with that administration, that, notwithstanding those expenses rose, they were able to keep the tax off the real estate.

Mr. Stimson — But is it a fact that the expenses did rise to that extent?

Mr. Cullinan — Yes, I am not denying the fact that the expenses of government have risen. So this State is not going to the "demnition how-wows." These parasites seem to infest our halls and get connected with a whole lot of institutions or bodies and fill the magazines and the newspapers with statements that better things could be done if only their advice, from the standpoint of ignorance, were taken! I point to the financial history of our State as a refutation, unanswerable, that the financial history of the State is to the credit of the people of this State, and to the credit of the much-despised Legislature.

Mr. D. Nicoll — Wherein is the great virtue of exempting from taxation one class of property? Where is the virtue of it?

Mr. Cullinan — It was not exempted, but we raised the money and it was not necessary to levy the tax.

Mr. D. Nicoll — But you taxed all other kinds of property, didn't you?

Mr. Cullinan — We taxed all other kinds of property because they were taxable. We were economical. We did not have to spend the money. We put it in the treasury, left a surplus there. Now, Mr. Chairman, just one word more in regard to the Minetto bridge. Is Mr. Smith here? Yes. I think the gentleman has drawn a long bow on the question of local appropriations. Take the Minetto bridge, for example. The Minetto bridge is a bridge across the Oswego river and the Oswego canal, four miles from the city of Oswego, on the Oswego river. On one side of the canal is the town of Granby; on the other side is the town of Oswego. The State of New York years ago decided to put a

lock — widen the river and put a lock right in the middle of a street or passageway. Well, from time immemorial they have insisted that the bed of the stream there, the canal and everything above it to the sky constituted State property. They exercised jurisdiction over it and maintained control. They also, from time immemorial, from the time that the canal was constructed and the lock constructed, paid all of the expenses. Now, when the Barge canal was constructed they made a still larger lock. The inhabitants said, "Why, we have got to build a new bridge." The State said "They were going to build a bridge and they insisted that that bridge should be, as far as the State was concerned, of an accepted style and character." That necessarily made the adjoining towns build a bridge of the same character. Now, all that that bill provided for is that the State of New York shall pay for its own bridge, or the part that belongs to it. And the Greater City should pay its share of this \$50,000 as being a part of the Barge canal expenditure of this State, just as much as she had to pay for the five terminals that we are constructing in the Greater City of New York. And, now, that the contract has been let, the State pays fifty thousand, the town on the one side of the river pays fifty thousand, the town on the other side, on the right side of the river pays fifty thousand, and a hundred thousand dollars is the cost of the bridge. Nobody is hurt and the State pays its own bill.

Mr. A. E. Smith — I think that the explanation that Judge Cullinan has given of the Minetto bridge at Oswego, the rather complete explanation he has given, goes a long ways toward showing the Convention the advisability of adopting my amendment, because the most eloquent men in the State can defend these private local bills, and that is why a great many of them get by. There are certain persons who can make you believe that they are absolutely all right. Thirty-three and one-third per cent. between the towns and the State and that is a good argument for my amendment.

Mr. Wagner — I won't take very much of the time of the Convention in further discussing this proposal, because a good deal of what I have in mind was much better said by Assemblyman Smith, and the proposals in the line of amendments which he makes are included also in the minority report which I felt I was compelled to make to the report of the majority. Now, I hope, if I find any fault with the proposal that is now before us, I will not be misunderstood as desiring to take away from the Committee on Finance any credit for the advancement which they have made in improving our financial system. Nor do I want to be understood as attacking in any way their methods, because I had the pleasure

of sitting on that Committee and the self-sacrifice and the self-denial to which they subjected themselves, in order to render a service to the State, would impress anybody that had the honor to sit with the members of that Committee. I was unable to agree with their conclusions, and that was due simply to a viewpoint in which I was the lone minority upon that Committee, and still I feel that I am right in my viewpoint and they are wrong. My criticism is mainly that they have not gone far enough. In fact, they have practically made no improvement upon the one subject in which our system of State finances need improvement. Now, Mr. Stinson, in his very able presentation of the subject this morning, would have us believe that the large increase of expenditures in this State is due to the system of financing under which we are now operating; and yet, if one will study the reason for the increases of our expenditures and the history, the legislative history, if you will, of our State in recent times, you will find that the one man who is responsible, and in many cases to his own credit, for the increased expenditures, is the very man to whom you now desire to give, to a large extent, the absolute control over the appropriations for our fixed charges. Our increased expenditures have been due in only a very minor degree to any extravagances which have crept into any of our departments. They have been due to the State assuming new functions of government, and in almost every important reform, in which we assume the new functions incurring increased expenditures, that function was advocated in public and in messages by the Governor of the State, and it was in response to the demand of the Governor for this reform that the Legislature acquiesced in his desire and initiated a new function of government. You take in the case of Governor Hughes. I will speak now of a few that are of such recent history that we all can remember of. Governor Hughes, in advocating the new Public Service Commissions, which, by the way, have increased the expenditures of our State, I think, some \$3,000,000 a year,—is not that the fact?

Mr. A. E. Smith — Including the New York commission?

Mr. Wagner — I mean, including the New York commission. Three million dollars per year, and that was something that many of the legislators voted for reluctantly, but it was his insistence and by the result of it that that reform was put upon the statute books which made a tremendous increase in the expenditures of our State; and, by the way, I recall very distinctly that the majority members of the Legislature felt that the sum of fifteen thousand dollars as a salary for a commissioner was far in excess of what the Legislature should allow, but Governor Hughes insisted

—he insisted that that amount be put into the bill so that he could get the character of men which he said he had in mind. So that there it is the Governor that was responsible for our increased expenditure. Now, there are the canals. One hundred and forty-seven million dollars they will eventually cost us. Is the Legislature and the system of State finances to-day responsible for that? Why, it is absurd to suggest it. The people themselves voted for that expenditure. Take the State highways. Do you charge that increased expenditure to the Legislature and our present financial system? Not at all. It was a new function, if you will call it such, assumed by the State, of having a system of improved State highways throughout the State, and a very popular assumption I contend, but that incurred an expenditure of one hundred million dollars; one hundred million has been allowed by the people for the expenditure, and about sixty-five million, I think, thus far has been actually expended. Is that due to the system under which we are operating? Not at all. The people demanded that we incur this expenditure—and that is why—if it is a burden; I say it is not a burden;—if it be a burden the people are responsible for it. Take the Palisades Park.

Mr. Brackett—And the State care of the insane?

Mr. Wagner—Yes, and the State care of the insane, amounting to a direct appropriation of about eleven million dollars per year. That is something which the State, the people of the State said, is a function which the State should assume, and that expenditure is not at all due to the present financial system of the State. Palisades Park, about three million dollars; is that it?

Mr. Smith—About two and a half.

Mr. Wagner—About two and a half million dollars—is that due to the present system of State finance? Not at all. The people voted for it.

Mr. A. E. Smith—And the State prisons?

Mr. Wagner—Yes, the State prisons. And so I could go on indefinitely and show that the present increase of expenditures has practically nothing to do with the system of making our appropriations. So that I hope a wrong impression will not be created here that we have had such ruthless legislators; men who had such a disregard of the interest of the people of the State, that we must minimize their powers and send them to utter decay, by taking away from them the powers which I believe the people desire should be entrusted to them as their direct representative, and give it to some superhuman being that we are going to create in this State. I hope the time will not come in this Convention now, or if it does that the people will reject it, that we shall go

back to the former organization before the creation of our own government and create again a King in this State, and a King you will create if a few of the gentlemen whose voices I have heard in private in this Convention have their way; and the Legislature will be a mere vassal of that King, to the ultimate destruction of democratic government. I need not point far, but look at the other side of the world and you will see what one-man power means. Now, there is one particular in which we must to some extent restrict the Legislature, and the Governor, too, because it is a weakness inherent in our own human makeup. To protect us against ourselves we must make certain restrictions, but you don't cure that by transferring this particular authority or power from one human being to another, and say that when we elect a Governor he is superhuman; he is not subject to the ordinary weaknesses of men. But we must in our fundamental law prescribe restrictions so that all of us, being weak and human, must be restricted by some fundamental law. Why, gentlemen, I do not care to be, and I would not be personal in this, but early in the meeting of this Convention, I heard some of our distinguished delegates who had no previous legislative record, or experience, rather severely criticize those legislators who delay and who foolishly consider legislation for weeks at a time, when the thing should be done in a day. This delay, they said, we have got to do away with in the future, and it is too bad that we have such inferior men in our legislative body. Well, I have been on committees and I have been working along with the most estimable gentlemen in our Convention, and I find that they are subject to the same weaknesses that the ordinary legislator is. Even in our fundamental law, we here discussed the question "Well, now, isn't this going to hurt so and so; or, hadn't we better be sure to help so and so?" The very things that but a week or two ago they condemned with all the severity within their makeup against these inferior legislators, they themselves were exercising, and were asserting the same weaknesses, and I have no fault to find with them, I like a human man, and I have got to admire the particular man I have in mind now because I find he is a human being.

But it shows that we must not be too ready without reason to criticize the other man, for we have weaknesses ourselves. But, as I say, the weakness there is, is in the log-rolling, of the character of legislation to which Speaker Smith so eloquently referred, namely the helping one another in the community, and if you notice the history of legislation, you will find that it is not merely a question of friendship; it is political; for you rarely see a member of the minority party securing a very substantial local appropriation to improve the conditions of his community.

and to make them a strong vote-getter there. So that, in the main, the motives that actuate most of these local appropriations are purely political, and in most cases, as we saw to-day, it is taking without justification money out of our State treasury to help some local legislator. But, gentlemen, those same motives actuate the Governors of the State. They usually have politics in mind to some extent. They all entertain future hopes and aspirations, and they look toward favoring certain communities as against others that were with them in the primary contests, and to punish others who dared to be for another candidate, and so on; and the same human weaknesses assert themselves in the Executive Chamber that assert themselves in our legislative body. So don't transfer the power from one man to another, so that he may exercise it to his advantage; but the legislator is powerless to exercise it for his local advantage, except he is a favorite with the Governor or he can convince the Governor that if he has this, the Governor next year will carry that district if he runs there for Governor or for President by an overwhelming vote. Now, I say these being our weaknesses, let us make restrictions in the fundamental law, so that we will have the law save us as against ourselves. And so the two-thirds provision, if made clear, as provided, as Mr. Smith shows, I think will absolutely cure the situation, because usually the minority has more than a one-third representation, and if the appropriation is one that is justified, being local, the minority rarely obstructs it, and if it is purely a local political proposition, as most of them are, there ought to be a minority who can make itself effective against its passage.

Mr. A. E. Smith — Just on that point, to make it perfectly clear, every one of the bills I read this afternoon could have been passed by the majority party last winter because they had two-thirds of all the members of the Assembly, but they couldn't get more than 76 or 77 for them, no matter what they did.

Mr. Wagner — Now, upon the fundamental question as to whether appropriations should originate with the Legislature or with the Governor, I have certain well-grounded, I think, convictions, but I need not discuss them here, because while a great deal in the way of advancement and concentration of power and scientific budget has been claimed for this proposal, yet the door is wide open so that the Legislature can exercise power equal, as far as initiating appropriations is concerned, practically with the Governor. It is on that fundamental question a mere straddle, and if I should argue on the one side, I could be answered by an opponent who will say, no, we recognize the proposition that the Legislature may initiate appropriations, and so it is a straddle upon that particular question, and I will pass it by. Now, I am

going to suggest that the Governor may be requested to come before either House of the Legislature, and, with all respect to the gentleman from New York, Mr. Saxe, I think this a very excellent reform which is suggested by the Committee on Finance. I think a Governor who is willing to stand for a budget, who is willing to stand for certain increased appropriations, or who is willing to stand for a proposition of starving certain departments, I think it is — it should be within the reach even of the minority members of the Legislature to request his attendance so that they may question him upon the proposition as to whether he is actuated merely by political motives or whether he has the efficient administration of government in mind. And so I would suggest an amendment, and I hope it will be accepted, that upon the request of one-third of the elected members of either House of the Legislature, the Governor shall be required to attend.

Mr. Quigg — What would happen if he did not attend?

Mr. Wagner — Well, if you give the Legislature, it seems to me, a constitutional power and authority to summon an individual, whether it be the Governor or any one else, before it and he refuses — it seems to me that there would be an implied power to punish him for that refusal, because you are giving to the Legislature a power which the ordinary court has over an individual.

Mr. Cullinan — Couldn't he be impeached?

Mr. Wagner — Yes, he could be impeached, it seems to me. I do not think there would be any difficulty about securing his attendance. And if he did not attend, why he would violate his oath; and, in addition to that, he would almost stand discredited before the people of the State if he did not either have the courage or the intelligence to publicly stand for a proposition involving the administration of his own office.

Mr. Quigg — Do you favor placing the Legislature in any sense over the Governor, or the Governor in any sense over the Legislature? Do you believe in that sort of government?

Mr. Wagner — Why, I do not — frankly. I would like to see both branches absolutely independent and the power of one should not be curtailed by the other, but that is a fundamental question upon which I am afraid I would not get very much sympathy here. And it is not involved here. We have got both things here; it is a straddle upon that fundamental question.

Mr. Quigg — The gentleman may get more sympathy than he thinks.

Mr. Wagner — Well, my past experience does not create any great hopes within me. I argued a question the other day which I thought was plain and clear, both from the standpoint of morality and from the legal standpoint, and I got little sympathy, so

that I am beginning to lose confidence in my own views. Let me say to the delegates here, in order to improve our present financial system, unless you adopt the suggestions of Assemblyman Smith, namely, the two-thirds vote and the requirement for swearing for requests for appropriations — and no one need argue the question, it seems to me here, that there is a difference between the mere sending in of an estimate and swearing to it, just as there is a difference between what the ordinary witness will tell when not under oath, and the care with which he will testify when he is under oath. He is going to be sure it is true. And I think that would be a great improvement in our present method of making up our estimates. Now Mr. Stimson stated that by this method we are going to do away with this bargaining with legislators. Well, how? Where are you doing away with the bargaining with legislators? You have got it here just as it is at the present time. Pass your budget and then the Governor will want to pass something that is a reform and he hasn't much sympathy in the Legislature, or he will want something else — we have seen some disgraceful illustrations in our government here of a Governor deliberately vetoing or signing bills for favor, having practically no concern about whether the thing was for the welfare of the people of the State or not. And that is not interfered with here at all. I have suggested in my minority report something that would do away with it. To make the Governor go on record within fifteen days after the session meets, as well upon local appropriations as upon his budget. Then he is on record and if he changes his mind afterward the public can easily inquire the reasons for the change. But as you have it now, the moment that budget is passed, the flood-gates are opened and the same old smoke will go up the chimney just the same as now. Those of us who have been members of the Legislature regard that as the important reform in the financial system of the State. No one in the Legislature has ever suggested that in the ordinary fixed charges which will be in the budget there is any favoritism, or very little, or any extravagance because, as we were told, most of them are fixed by law. So that you haven't met the situation at all, so far as our finances are concerned. Now, just one word and then I am through. Mr. Stimson said, "Why, look at the old country. They have a system such as I suggest here and it has worked well and tended toward economy." He has in mind England, of course. Why, I beg, with all deference to the distinguished Chairman, to differ with him in that the budget in England is not an executive budget. It is a legislative budget, for the majority party in Parliament is in control of the government, and the heads of the department are the members of the Legislature; just as if, when we were in authority here, Speaker Smith

and other members of the Assembly and other members of the Senate and myself were at the head of the departments and so we, as members of the Legislature, made up the budget and passed it through. The minority in Parliament criticises the items. So that, really, there they have the exact system which we have here now, except that they have a more scientific method of making the budget; that is an improvement which is needed here, and with that, of course, I am in hearty sympathy. We should have a budget system; and, as I said in the beginning, to that extent this is a step forward in the administration of our affairs. We could have just as scientific a budget in the Legislature as we would have with the Governor.

Mr. Brackett — Does the Crown have anything to do there in the making-up of the budget?

Mr. Wagner — Not a thing.

Mr. Brackett — Does the Prime Minister?

Mr. Wagner — I believe the Prime Minister is a member of Parliament.

Mr. Brackett — But does he, as an individual, have anything to do with the making of the budget?

Mr. Wagner — No, he hasn't any such vetoing power or initiating power as we propose to give the Governor here. Lastly, I think that an unfortunate authority for the present day, for us at least, was quoted as an authority for this proposition. All of us, of course, have the highest admiration and regard for Alexander Hamilton. Conditions might have been different in his day, but to-day none of us, or very few of us, share his views as to the intelligence of the people to conduct their government. So I hope that the Committee will adopt the suggestions made by Speaker Smith, and also my own, that one-third of the members of either House may require the attendance of the Governor. And may I ask a question on the interpretation of the provision here, of the Chairman, whether — suppose the Legislature ignored entirely the budget as proposed by the Governor — would the words "further appropriations" give them the power to make up an entirely new budget and send it to the Governor, under the authority given?

Mr. Stimson — You ask that question?

Mr. Wagner — Yes.

Mr. Stimson — I ask you, in answer to that, to consider the limitation that is put upon it, "such further appropriations shall be made only by separate bills each for a single work or object," and I should say, that that prevents such a thing as you suggest.

Mr. Wagner — Well, a single work or object would mean that perhaps each department would be a single work or object in the

ordinary budget appropriation bill and there would be no difficulty in making up one for each department. However, that is not so important. I hope, in order that we may make this a real financial advance — and I do not say it is not real now; it has some admirable features, but, in order that we may make it really effective, so that you can argue with the people in adopting this provision, that you really have a reform here, I suggest that you adopt the amendments proposed, which are due to a study from experience as a member of the Legislature, having something to do with the making up of appropriation bills.

Mr. Schurman — I think it is very clear that we have before us a pretty difficult problem and our circumstances are different from most, if not all, other countries. The example of England, for instance, has been cited twice to-day for diametrically opposite purposes. I suppose it is true that we can say that in England the budget is made by the Legislature but I suppose it is equally true to say that in England the budget is made by the Executive department. Formerly the King was the Executive department. To-day the Executive department consists of a committee elected from the prevailing party in the Legislature; and that committee, which is known under the name of the cabinet, administers the government of England, subject to the approval of the Legislature, which may dismiss them at any moment. Our circumstances are different. We have a Legislature elected for a definite term and we have a Governor elected for a definite term. The problem arises as to how, under these circumstances, the budget should be initiated. Now I think those who advocate the legislative initiation of the budget may find something in the experience of the past to warrant their conclusion. One of the best servants that this State has had in the past thirty years won his reputation as Chairman of the Finance Committee. Though he was afterward Governor of the State and did great things, he never in that capacity eclipsed the just distinction and renown he won as Chairman of the Finance Committee. I refer to the late Frank W. Higgins. I have no doubt that many gentlemen in this Convention could mention the names of other representatives in the Legislature who have rendered conspicuous financial service to the commonwealth. I might go on and argue that, so long as we had such men in the Legislature, the existing system is a perfectly safe one. I call attention, however, to the fact that since the last Constitutional Convention met the problem, as the Chairman of the Finance Committee has shown, of financing the State has become an exceedingly serious one, and if there is anything wrong with the present system it will not be an adequate defense of that system to point out how in exceptional or in a fair number of cases it has

worked well in the past. Now, Mr. Chairman, as I have thought of this question, the essence of it seems to me to be this: Who shall take the initiative in framing the budget? The answer, I find, to that question, is that the person or persons are most competent to take the initiative of the budget who are in closest contact with the executive and administrative work of the State. I think, however, it is not so easy to determine offhand who these persons are and something will depend, a good deal will depend, upon the action which the Convention will take in dealing with the report of the Committee on Governor and Other State Officers. Nevertheless it does seem to me that when any fair-minded man considers the situation as it is to-day, he will have to admit that those who are attending to the administration of government of the State twelve months in the year, and not this or that chairman of a committee in the Legislature, are the persons who are in closest contact with the administrative and executive work of the State. And if I am right in this conclusion, then the further conclusion follows that they are the persons to initiate the budget.

Mr. Chairman, I am perhaps in a somewhat exceptional position in this regard, though — don't misunderstand me — I do not claim any more wisdom on this subject than any other man in the Convention. I have been making budgets for twenty-four years. I am the chief executive of a little republic. We have six or seven thousand citizens. Our expenditures are between two and a quarter and two and a half million dollars a year. I deal with the legislature, who are called the board of trustees, only I am also a member of that legislature. I have before me the budget prepared for our little republic for the ensuing year, 1915-1916. I began my labors on that budget in November, 1914. I called on all the administrative officials under me, as chief executive of our republic, to state what appropriations they would need for the year 1915-1916 and whenever there were any diversions from the preceding year I desired to have an explanation. I received in due time requisitions from all the different departments and officials of our little republic. Where there were variations, if the written explanation did not satisfy me, I sent for the heads of the departments and in time I prepared a tentative budget, ready for submission to the legislature of our republic. That tentative budget has on each page six columns. One column mentions the object for which an appropriation is made. Then these objects are first given in the gross and afterward in detail, minutely analyzed. After each of the names is a figure indicating the request which the head of that department has made for appropriations for the year 1915-1916. Another column shows what that departmental head had for the preceding year. The fourth

column shows the increase, where there is an increase. The fifth column shows the decrease, where there is a decrease; and the sixth column shows the figure which, on the basis of the figure thus brought before the chief executive, he recommends be appropriated to that department for the ensuing year. Now, Mr. Chairman, having had twenty-four years' experience of that sort, and finding it absolutely impossible to imagine how any member of the Legislature of our State could do the work I have done, simply because he is not in touch with the administrative department of the republic, as I am, I have been forced to the conclusion that the State of New York will ultimately find itself compelled to adopt an executive budget. I believe it will be forced to that position by the requirements of good administration, of sound business principles. I recognize that we stand at present midway between the two systems, for the Legislature to-day is undoubtedly exercising, and in the past has undoubtedly exercised, functions which may fairly be regarded as administrative functions. But as we improve and perfect the organism of the government of this State, we shall do it by a more complete differentiation of functions than that which now exists. And when we have thus realized the high ideals that sound business principles and good administration call for, I believe we shall find that we have adopted some such executive budget as that recommended in the report of the Finance Committee which Mr. Stimson so admirably expounded to us this morning.

Mr. Brackett — I have debated not a little with myself as to whether I should say a word on the subject that is under discussion. I am sure that some of my friends will hold it true that I have decided wrong in making any remarks at all on the subject. And I should not, Mr. Chairman, care to take the time of this Committee or to say a word on the subject if it were not for the fact that I have noticed, from the beginning of the discussion clear through, on one side a continued jeremiad toward the Legislature of the State. And I find that in the criticism of the action of the Legislature of the State, it is hoped to find the chief reason why this change should be made. My friend from New York, the honorable chairman of the Committee, having come up here and studied the question for a month or two or three, comes out with his method of improving the situation as blandly as a little girl swinging her May basket on the side hill on a May morning, and feels that he has discovered something which at once has delivered the financial situation from the depressing conditions which have heretofore existed, and which is at the same time to be the model and the admiration not only of this State, but of every State in the Union.

Mr. Chairman, I have grown so old and so crotchety that I am sometimes inclined to believe, with Pope, that

“For forms of government let fools contest;
What’s best administered is best.
For modes of faith, let graceless zealots fight,
He can’t be wrong whose life is in the right.”

From that philosophy I draw just this conclusion, that my friend will find that his system is just as likely to fall into disrepute — I think a little more so — as is the system from which we are about to depart. I say “from which we are about to depart” because I see the fagots and the fire right ahead to roast any one who opposes the change, and I recognize the fact that the change is to be made. The system which is here proposed will be better if it is administered better; it will be worse if it is not administered as well as or better than the system already in existence. Why, gentlemen of this Committee, I would think as I sat here, from some criticisms that are made by members who have spoken here, that the system of the State has been a mere bedlam; that it has been no system whatever; that the members of the Legislature have come down here each year, and, like drunken sailors, have simply dipped their hands deep into the treasury of the State and thrown the proceeds far and wide, without rhyme or reason.

Mr. Chairman, it pleased a kind Providence to give me the honor of serving in the Legislature of the State of New York fifteen long, hard-working years. It will be the pride and delight of my last years, however long it may please the good Lord to leave me here, to know that it was my privilege to serve for that great length of time with the unselfish, the devoted, the industrious, the noble men who, in the main, made up that body. Does the distinguished chairman of this Committee think that the appropriations of this State for a great many years have been made without the most painstaking saving and care? It was not my theory in the Legislature to devote my time exclusively or very largely to financial legislation. It so came that the assignment of duties rather put me on the judicial side, and as a member of that committee and as for eight years its chairman, the enormous burdens there were such that there did not come to me that minute knowledge of the financial systems of the State, but I bear cheerful witness that while there were things that went through the successive Legislatures of which I did not approve, that while there were many things which the wisdom of time has demonstrated were not best, they were scrutinized with painstaking care and with the honorable intention to do exact justice to

the people of the State and for the persons for whom the appropriations were made, and that, instead of having been squandered, it was with the most painstaking parsimony that the sums were doled out. Why, Mr. Chairman, if this is a budget which is proposed here to-day, we have had a budget all the days of the last twenty-one years, since the previous Constitution was adopted. I say to you without qualification and without any possibility of contradiction, that there never has been a supply bill or an appropriation bill which has gone through, that the hearings day and night have not been most painstaking and most exhaustive, and I certify to you, sir, Mr. Chairman, and for the correctness of this statement I call in to witness, the gentlemen who spoke this afternoon, Mr. Smith from New York, Mr. Wagner, who has been the leader in the Senate as Mr. Smith was in the House, Mr. Young from Westchester—I call for a witness any member of the Legislature who has been here and who from his knowledge can testify as to the truth of what I say. While it has not been denominated a budget, there has never been an appropriation inserted—an appropriation bill or a supply bill, the latter being simply to supply deficiencies that were discovered necessary because of the pinching of the appropriation bills—there has never been one of them that the department for which it has been made has not had to make its detailed statement, has not been called up and questioned, questioned minutely, and where the department head has not been called upon to justify the appropriation made, and if there has been extravagance, Mr. Chairman, if there are items in the bill scattered through the laws of the years, I here and now solemnly declare, and it is my firm belief that in three of the four of the extravagances they originated in the executive chamber instead of the legislative. Why, let me say to you gentlemen standing here representing the Federal system, who are omitting no means in your attempt to augment the executive power—

Mr. Cullinan—Mr. President, will the gentleman allow me to ask him a question? I don't understand there is any budget system in the Federal system.

Mr. Brackett—I have passed the question of the Federal budget, Brother, and I am on another point. These gentlemen who are quick, whenever there is opportunity to take away from the power or the dignity of the Legislature, let me certify to you that you do not know what you are doing. I make no charge that you are not as well intentioned as those who would defend the basic principles. I appreciate the high-mindedness with which this Committee and the chairman of this Committee have worked in bringing in this report. I would not if I could, and I cannot

if I would, fail to recognize the absolute integrity and the wish to do exact right that is evidenced by this report. But I beg the members of the so-called,—the supporters of the so-called Federal system to bear in mind that this continual building up of the Executive and this continual degrading and tearing down of the Legislature can lead to but one end. Does my friend, the chairman of this Committee, who has so criticised, and criticised properly, log-rolling in the Legislature,—does he think that that extremely interesting operation is confined to the members of the Legislature? Why, as I recall, year after year, the procession of legislators that have been called down, one by one, to the executive chamber and have been told that this must be passed; that if this could be supported that this little local bill could go through; that this must be defeated and if it is defeated that some advantage, political or otherwise, to the members assisting to defeat it would be recognized and would be wrought out,—as I recall those facts I want to say to the distinguished chairman of the Committee that ordinarily the members of the Legislature are mere tyros in log-rolling compared with the executive downstairs. And, of course, they have not a tithe, nor a tithe of a tithe of the power to exercise in this log-rolling capacity.

With the system of the budget which we have thus heretofore had, and which this does not tremendously change, except as it provides that the executive shall make it up, I confess myself in entire sympathy. If the chairman of the Committee, or the Committee itself will adopt the suggestion of the gentleman from New York, Mr. Smith, that the chief fiscal officer of the State, by whatever name he may be known, shall make this budget, I will give it a most careful and a hearty support. I do not criticize the attempt to have a budget made and have it named a budget. I do not much criticize that it should be made by someone outside of the Legislature in the first place, if no hampering limitations are thrown around it which will prevent the exercise of the people's will through the Legislature. I do not fail to remember in all this, Mr. Chairman, what I believe the members of this Committee will not fail to remember, that it is the hand that holds the purse that governs the Commonwealth. Why, Mr. Chairman, the right to initiate financial legislation has been one of the dearest to the people that elect the immediate representatives of the people during all the centuries since we have had free government at all. It was the right for which Hampden fought against, I think it was Charles, and because he insisted that it was wrong to levy ship money without the concurrence of the Parliament, he was imprisoned. It is a right for which the Commons of England have fought during all the years and have never

surrendered. You may say what you please about the budget in England at the present time. If the House of Lords, let alone the King,—if the House of Lords to-day should attempt to bring in a financial bill, to originate a financial bill, the life of the House of Lords as a House would not be worth a week's purchase. There never was a time that the Commons of England did not stand with all its British stubbornness for its right to initiate financial legislation. But, has the history of our own national legislation been less persistent or less insistent? Read your history. Time and again the conflict has been between the House and the Senate, not on the broad principle, perhaps, that the House had the right to initiate financial legislation because the Senate never dared to deny that, but on the question as to whether in some little particular that right was not being violated. Time and again the House has disciplined, and I believe every time it brought to book the Senate for attempting even to initiate some legislation, which the House itself was not opposed to in substance, but they made this fight on the proposition that the initiation must come from the House. Gentlemen of the Committee, who are the members of your Legislature? I want to say to you that they are the truest representatives of the people in all the State government. If you want something done in the way of relief, where do you go? You go primarily to your Assemblyman, the man who most truly represents his district, and the nearest. And if an Assemblyman is worth his salt, if he at all impresses himself upon his district, if he comes down here and at all accomplishes anything in the way of reputation or in the way of work, it is because he truly represents the men at home. It is not because he has his hand to his ear and slavishly listening for every whim and for every word, or opinion, but it is because, standing on his two feet and knowing the general mode of thinking of his people, knowing the interests of his people, he proceeds on lines which represent his people and does properly and properly represents them along the path of proper government. You may say what you please and sneer at your Assembly. You may find fault here and there, you may find mistakes this year and that year, and many of them, but when the book is closed and the record is made, it still stands that the Legislature of the State, and particularly the members of the lower House of the State, with their small constituencies, and with their quick return for another lease of power — and God make the time long when there shall not be a quick return in order to have their commissioner renewed — it still stands that these are the men who most truly represent the people of the State. I am aware that so learned and so earnest a student as the distinguished

Chairman of this Committee feels many times that the representation is not on the high plane on which he would put it. I recognize that there are many men in the State who are not at all satisfied with the representation — but it is a true representation, and I want to say to my learned friend that there is many a man who comes here from his constituents to the Legislature who comes here and votes wrong many times, who has not a tithe or a hundredth part of my learned friend's science of government, I would say that there is many such a man who more truly represents his constituents and the people of the State than either my learned friend or I would do.

Why, Mr. Chairman, we measure all levels not from the height of the ocean wave beaten by the storms in their fury until they are mountain-high, but we measure them by the level of the calm sea, and the man who comes here and represents most truly, however mediocre, represents his constituency and their own mediocrity, he is the man who more truly represents the people than the wise and the learned. Oh, Mr. President, I sometimes think that the language of the Master, when He said that these things were not given to the wise and the great, but to the meek and lowly,— I sometimes think He had in mind the situation in the State of New York about the year one thousand nine hundred and fifteen. Do not let us think that, because we are wiser, because we have higher standards, because we believe we could do better the work of the State than the men who have been sent here by their constituents, do not let us hug the delusion that we are thereby representing the people better. Now, Mr. Chairman, I appreciate that all this is common-place. I mention it only because I can never sit here easily and hear the continual fault-finding, the continual expression of belief that the people of the State have been grossly misrepresented in the past in their Legislatures here. It stands true to-day, Mr. Chairman, as it stood 140 years ago, that the very essence of self-government is in the representation of the people in the legislative body. Just as truly as you undermine that legislative branch, just so truly you have taken the first step, I care not how small it is, away from representative government and toward an autocracy. It may be small, it may, Mr. Chairman, be hardly perceptible, but the next step is easier. We have accustomed the coming generation to getting away from the true standards, and while it may be after you and I, Mr. Chairman, have become forgotten dust, but just as surely as the time shall come, it will prove that the departure from self-government, that the surrender of self-government, the surrender that will come in favor of autocracy, will be found to have had its root in the departure that we may make here from representative government and from the true conception of the legislative function.

I do not find in this bill, Mr. Chairman, anything which impinges upon the question of the short ballot, as to which we must later come upon the report of the Committee on Governor and Other State Officers. If there is anything in here that the friends of the measure feel does impinge upon that question, if there is anything in here that is dependent upon making the State Officers — under the Governor and the Lieutenant-Governor — appointive instead of elective, I warn my friends that they should change that, because I do not believe that this body will ever pass the proposition that the Governor of the State shall appoint every State Officer other than Lieutenant-Governor. Because of the fact that my reading of the bill does not lead me to the belief that there is anything here that does correlate or that is interlocking with that proposition, I shall not now and here discuss that phase, but reserve any remarks until that question shall arise directly. If you will here and now in this bill insert “the Comptroller” instead of “the Governor” as the person who shall prepare the budget, or if you would make a board of three, of which the Comptroller shall be chairman, instead of weakening the force of this bill, you strengthen it. How? You then have at the beginning the estimate of the Comptroller. You then have the action of the Legislature. Finally you have in the approval or in the veto of the executive his judgment of the measure, and instead of having two, as now, with mere legislative approval, and then an executive, passing upon any financial bill, you have three. You have added the distinct and separate judgment of the chief fiscal officer of the State. I want to say that all that Speaker Smith, the delegate from New York, said to-day, as to the actual working out of the system in the legislative proceedings of the State, I give to that my most hearty and complete approval. He said, and said almost in the words that were floating through my own mind, what I myself would have said. I certify to you, and to this I would be glad if I could subjoin my own, he has not at all exaggerated, nor has he varied from the precise, practical working out of the suggestion of the financial legislation in the Legislature. It will be for the benefit of the people of the State, it will be by all odds for the benefit of the people of the State, if the chairman of the Committee and the Committee itself could see its way clear to accept this amendment that the Comptroller should be the one, or the chief fiscal officer of the State, by whatever name he may be known, shall be the one to prepare this budget. You add, then, to the safeguard, and, more than all the rest, you do not magnify and augment the already too great power of the executive.

Mr. Cullinan — Would you give the power to the chief fiscal officer, regardless of whether he was elective or appointive?

Mr. Brackett — My dear Mr. Gentleman from Oswego, I would not give any power that was worthy the name of power to any appointive officer anywhere. If the time has come, and I hope presently to discuss it on the report of the other Committee, if the time has come when this Convention, assuming to represent the people of the State, has so far forgotten the traditions of the State and of the country, has so far departed from the wishes of their constituents, that they want to make the chief officer of the State appointive instead of elective, I, for one, am ready to believe that the end is rapidly approaching of republican government.

Mr. Latson — Mr. Chairman, I scarcely think that we need file an indictment against past legislatures in order to justify the necessity for a budget; nor do I believe we are led very far into a consideration of the overlapping of the three great functions of government with which we are familiar. It seems to me that this Convention owes a very great debt to the Committee that has given to us so strong and helpful a State paper as their report, and that has handed us a proposition in the form of an amendment, mapping out a plan for our budget system. I have approached it, Mr. Chairman, as a student, and there are some questions that have occurred to me with reference to the working out of the plan which has been presented by the Chairman of the Finance Committee. They seem to me like problems, and I should be greatly indebted if I can have a word of light with reference to them. Certain dates are fixed for action by the heads of these departments, and by the Governor. The Governor is called upon on or before a time certain to deliver to the Legislature his proposed budget. I have wondered just what would happen if by any inadvertence or, indeed, by any design, that day should go past. I observe later on a provision to the effect that neither House shall consider further appropriations until the appropriation bills proposed by the Governor shall have been finally acted upon by both Houses. And again, "No money shall ever be paid out of the treasury of this State or any of its funds or any of the funds at its command, except in pursuance of an appropriation by law." If, then, by virtue of a Constitutional mandate, the budget shall not have reached the Legislature and consequently there shall have been no action upon the proposed budget, and the Legislature cannot under the further mandatory provision of the Constitution make any appropriations whatsoever, it would seem to follow that a time-lock had been put upon the treasury of the State for a year. It has seemed to me to be a difficulty that might wisely be considered and perhaps remedied. The second point that has occurred to me, Mr. Chairman, also in consideration of these dates: If I correctly read this proposition there are two constitutional duties

imposed upon the Governor, one is to revise the figures which come to him, and the second is to transmit to the Legislature on or before the fifteenth of November in each year — on or before the fifteenth of November in each year the head of each department shall submit to the Governor itemized statements of appropriations. The first duty of the Governor is to revise. Now he may revise at any time, of course, before he transmits to the Legislature on the first day of February. Let us see what would happen if an outgoing Governor should receive from the heads of these departments itemized statements of appropriations. The outgoing Governor should before the first of January exercise his constitutional prerogative and revise. I am not sure that the incoming Governor could sit in review of the action of the outgoing Governor and attack the revision of the former Governor, recast it and readjust it and send it to the Legislature in a new form, and in that same thought, as it seems to me, is the danger of having an outgoing administration through the heads of departments and the outgoing Governor leave as a heritage or legacy for the incoming administration estimates which could not by any circumstances be satisfactory if there existed a change in political platforms. Now, it seems to me that that question is of some consequence, because in page 2, line 12, it will be noted that on or before the first day of February the Governor is called upon to transmit to the Legislature "*so revised*" — and thus the act of revision is given a significance as a constitutional duty, and if once performed it does not seem to me that an incoming Governor could sit in review. There is one other thought that occurred to me, Mr. Chairman, and that is with reference to these heads of departments. They are given the right to attend at either House of the Legislature, to appear and be heard. Now I have considered what departments the draftsmen had in mind. Departments contemplated by the Constitution? Departments created by the constitutional provision?

Mr. Quigg — Mr. Chairman, I rise to the point of order that the time for recess has arrived and our work has gotten pretty heavy, and unless we do it regularly and respect these hours, I do not suppose we will be here at times when we ought to be. I make the point of order that the time for recess has arrived, and I move that the Committee do now arise, report progress and ask leave to sit again on the same subject to-night at eight-thirty.

The Chairman — You have heard the motion that the Committee do now arise, report progress and ask leave to sit again on this same subject at eight-thirty this evening. All in favor will signify by saying Aye, contrary No. The motion is agreed to. We are now in recess until eight-thirty this evening. Whereupon, at 5:35 p. m., the Committee took a recess to 8:30 p. m. the same day.

AFTER RECESS—8:30 P. M.

Mr. Louis Marshall, of New York, in the Chair.

The Chairman — The Committee will resume its session.

Mr. Latson — Mr. Chairman, as we were adjourning for recess, I was indicating to the Committee certain problems of construction that had presented themselves to my mind and I approached this whole question with the feeling that this question of a budget was one of the most important questions that this Convention was called upon to consider. I had well in mind the remarks made by the distinguished delegate who graces the Chair as Chairman of the Committee to-night when he stated only a short time ago that he thought that conservation was perhaps the strongest, greatest and most important question to be considered by this Convention. Other problems have been spoken of by other delegates as being controlling questions before this Convention, but I feel that this question, the question of a State budget, is just as important as any question that has been or can be presented to this Convention, and I approach it with a feeling that we have before us a very definite and well-defined duty. We must solve this problem and there must be inserted in this Constitution proper budgetary provisions. For that reason I have approached the particular recommendations from the Committee on Finance somewhat critically in order that we may surely have a provision that contains no error and in which there occurs no inadvertence and with reference to which there can be no doubt. I had pointed out at that time a doubt with reference to the functions of an outgoing Governor and an incoming Governor as marked by the duty of revision, and as I have thought it over since I spoke on that question, my mind has been diverted to the provision in the proposed amendment giving to a Governor the right to amend or supplement a budget. You will remember that I directed your attention to the fact that by this proposed amendment, the revision of a proposed budget coming from the heads of the several departments was a constitutional duty, and that further along it was provided that the budget so revised should be submitted to the Legislature. And I brought to your attention the fact that it might very well be, under the dates prescribed by this proposed amendment, that one administration might present the proposed budget, that it might be revised by a Governor just before the expiration of his term of office, and the incoming Governor would thereupon be faced with the problem of having on his hands a budget revised, and then be called upon to determine whether he might sit in review of the revision of his

predecessor or whether he, on the other hand, must transmit to the Legislature the budget that had been thus revised. It is true that provision is made here for a supplemental budget, for an amendment to the budget, but if that be the answer to the problem then that answer concedes that the revision by Governor number one has been an executive act pursuant to the mandate of the Constitution, and that the incoming Governor has before him a budget revised; and the secondary question presents itself whether this provision contemplates that an incoming Governor may amend or supplement a budget which has been revised by his predecessor. The question is whether or not the provision for amendment, the provision for a supplementary budget, is limited to the act of the Governor who supplements or amends, or whether it goes so far as to give to a Governor the right to amend or supplement the act of his predecessor. My object in pointing out what seemed to me to be somewhat difficult problems of construction is that we may bring this provision and this Proposed Amendment to that degree of perfection which will eliminate any of these difficult questions of construction. It seems to me that the other question which I presented is one of considerable importance; that is that by an omission to present, to transmit to the Legislature this budget upon a day appointed, or within the limitation of time prescribed by this Proposed Amendment, there may not result such a situation that the Legislature could not constitutionally make any appropriation whatsoever for a full year. If there be any such danger, it would seem very easy, very simple, to so modify the language that the danger should be eliminated, and in that connection we must remember that these dates prescribed must fall within one of two classes. They are either merely mandates of a directory nature or they rise to the importance of mandates of a jurisdictional nature. If you decide that they are merely directory, then I wonder just what value the dates have. If the Constitution provides that this budget shall reach the Legislature on or before a certain date, and you answer that that is merely directory, and if the budget reaches the Legislature at some later date the Constitution will be satisfied, then of what special value is the date? The danger to my mind, as I see it, is that this may be regarded as jurisdictional and unless the budget shall reach the Legislature within the time appointed it may be held that the time having passed the budget can have no value and have no effect, and it would not be difficult I think to base an argument upon that line of thought; for just why should the Constitution provide that the budget should reach the Legislature "On or before the first day of February?" Evidently, it could be argued, that the Legislature should receive this budget early in the session, that there

should be ample time for consideration; and if you argue that, if that reached the Legislature at a later time the Constitution would be satisfied, then I wonder if it might not reach the Legislature late in the session and thus defeat the entire purpose of the provision. Now, passing from that to the third point that I was touching upon as we entered upon the recess, I want to call attention to the provision with reference to the heads of departments. Now, every word that we find in our Constitution must have a definite and precise meaning, and when we speak of the heads of departments we must certainly be speaking with precision, and departments must be understood to mean departments as they now exist under our present Constitution, or they must mean departments as they will exist when we have revised this Constitution as a whole or, finally, that word may mean departments as understood by the Legislature. To me that becomes of some importance. If the heads of these several departments are under a constitutional duty and obligation I want to know where to fix that duty and that responsibility. If the heads of departments are to have a seat in the Legislature and a right to be heard, I want to know just who those people are. I want to know what constitutes a department within the meaning of this provision and I want to know what constitutes the head of a department within the meaning of this constitutional provision. So far as I can recall, we have very few departments within the scope of government of the State of New York to-day. There is a banking department; there is a public works department; there is a conservation department; there is an education department; there is an excise department; there is an executive department; there is an insurance department; there is a labor department. There may be others, but there are certainly many commissions that would rise to the dignity of a department if they were thus denominated.

Mr. Stimson — The gentleman evidently was not here this morning when I explained the meaning of the words "heads of departments" as used here, explaining that it had reference to a possible classification in the departments which has been under consideration by one of the committees of this assembly and which was called for by the platforms of the two parties which are represented in the Convention. I also explained that if, for any reason, it is necessary for the Committee to choose one of two alternatives in framing this language, and we do, for the purpose of simplicity, adopt this language for that measure — that in case, for any reason, the classification provided for by the platforms in question did not go into effect, the only change necessary would be to insert the words "board, commission or other officer" in

the amendment, a matter which might be done by a recommittal to the committee before the third reading.

Mr. Latson — Mr. Chairman, I was present when Mr. Stimson made the remark to which he has alluded, and I had not overlooked it, Mr. Chairman, and I had in mind the very remark that the Chairman of the Finance Committee made this morning and I was about to draw attention to the fact that if we are called upon now to vote upon this Proposed Amendment giving to the heads of departments a seat, a right to a seat, and a right to a voice in our Legislature, I submit with the greatest consideration and respect that we should know with some degree of precision just who will constitute the persons to be thus favored. I want to know who it is upon whom shall devolve this constitutional obligation; just who it will be who will have this right to sit in the Legislature, and as I was about to say, if we are to test it by the present scheme of government, there are certain departments which I could mention, but I don't know that all the arms of our State government will be classified as departments within the full meaning of the word as used in this proposed constitutional amendment; and, if, secondly, we are to regard this word "department" as one yet to have a definition by the incoming of an amendment from some other Committee I should scarcely feel that I could vote intelligently upon this amendment until I knew just what functionaries, or arms, or instruments of government were under contemplation, because the duty is important and the right thus conferred is important; and, finally, I am not sure that this word "department" is limited to its constitutional meaning. The Legislature has undertaken more than once to constitute departments. Departments have been organized by the Legislature, and if this word goes so far as to include such departments as may be created by the Legislature, then, in the last analysis, you are conferring upon the Legislature the power, by indirection to be sure, and yet conferring upon the Legislature the power to give a seat and a right to be heard to those of its own nomination, and many that we have not now under contemplation. Now, it seems to me that these problems are problems entirely of construction and that our Proposed Amendment creating a budget and providing for the source of information with reference to that budget, and providing for the transmission of the information to the Legislature, and providing for a seat and a voice in our Legislature, should be surrounded with language of definition so precise that there could be no misunderstanding and that there could be by inadvertence no ambiguity. I have not, Mr. Chairman, a definite proposition to present to the Convention nor to the Committee as a substitute or as an amendment to the language submitted. But I throw out

these suggestions of construction in the hope that the Chairman of our Committee or his associates may be able to throw some light upon them and perhaps indicate the fallacies into which I have fallen.

Mr. Hinman — Mr. Chairman, I have not taken very much of the time of this Convention, but I do feel that I have given this subject of the budget, I dare say, as much consideration as any member of the Convention, not only during the time that we have been sitting here as a Convention, but for the last two years in the Legislature; and I therefore feel very much interested in the subject, and I desire to have a little something to say upon the subject. I have had a disagreement or two of a friendly nature with the distinguished Chairman of the Committee on State Finances, but I find that he has modified his original judgment with reference to this proposition, and I have no hesitancy in modifying my judgment to meet what I think is a most important situation. We should not adjourn this Convention without providing for some kind of a budget system, and I have therefore concluded to support this proposition, and I do so heartily. For the last two years I have been endeavoring to bring about the preparation of a legislative budget, feeling that it was a legislative function. The bill that I sought to have passed provided for practically all of the elements that are found in this budget, the essential elements, with the exception of that part which gives the Governor a certain part to play. From my own experience in the Legislature, in endeavoring to bring about such a situation and the provision for a legislative budget, I have concluded that it is hardly likely, if we adjourn without providing for some kind of a budget, that the Legislature will itself provide what the Chairman of the State Finance Committee has seen fit to call a self-denying ordinance. Now what are the essential features of a budget system? In my judgment the essential features of a budget system comprise, first, the collection of information as permanent archives upon which may be predicated an intelligent revision of the estimates of the needs of government; second, the revision of those estimates by a properly constituted authority, with full information upon the subject; third, adequate publicity; fourth, deliberation and discussion; fifth, the passage of the budget as a whole; and, finally, permitting the members of the Legislature to think of their own districts after they have thought in terms of the State. Now with reference to the collection and compilation of statistical information as permanent archives, we need such records for ready reference and comparison. One of the reasons why some men in the Legislature in years gone by have become men of power and influence in the Legislature is because

of their knowledge and their grasp of the subject of finances of the State. For years Mr. Merritt was the chairman of the Ways and Means Committee and the majority leader upon the floor of the House. His mind was a storehouse of information upon the finances of the State and upon all of its needs, and a study of the finances of the State means a detailed knowledge of all of the needs of the State. The secret of the knowledge and power of Senator Allds, for years Chairman of the Senate Finance Committee, was the fact that he had in his possession an absolutely detailed knowledge of every need of the State government, and I am informed that he retained for himself and prepared for himself a card index of every detail of expenditure covering a long term of years, something that was of wonderful value to him as a State legislator.

Why should not the State be in possession of just such statistical information? Why should not the House be possessed, either jointly or separately, of archives that will give detailed statistics not only for one year, but over a long period of years, to be added to as the years go by. The personnel of the chairmen and of the members of the Ways and Means and Finance Committees changes with the years. The clerical forces of both of those Committees change as the years go by. Since 1910 in the Assembly we have had a change of chairman of the Ways and Means Committee almost every year. Mr. Smith was chairman of the Ways and Means Committee in 1911. He was at that time the majority leader also because the rules then provided that the chairman of the Ways and Means Committee should be the majority leader. And I think he will state to the House that his duties as majority leader were such that he was unable to give very much time to the preparation of the financial measures and the presentation to the Legislature of the budget, and that he was compelled to rely upon the Comptroller's office for his information. In 1912 Mr. Whitney was the chairman of the Ways and Means. In 1913 Mr. Bush was the chairman of the Ways and Means. Mr. Macdonald has been chairman for the last two years, and he undoubtedly will not be a member of the House in the next session of the Legislature and it will require the election of another new chairman of the Ways and Means Committee. The experience in the Senate has been somewhat similar. Here is where the financial measures originate, and therefore it has been my judgment that there should be a budget bureau of the Legislature which would compile and retain permanent archives and information which would pile up with the years, which would be for ready reference not only by the members of the Ways and Means Committee, and the chairman of that Committee, but any member of the House,

any member of the majority or of the minority, because without that knowledge and without that information a man is as helpless as a babe in trying to contend with the chairman of the Ways and Means Committee. My idea was that the head of this legislative budget bureau should be elected by the Legislature upon joint ballot of both Houses, in order that the head of this bureau should not be the agency of any one man or two men, or any group of men in the Legislature, but should be an agency of the entire body who should be appointed or elected in such fashion, not for one year or one session, but for a term of years, and who should serve not only during the continuance of the session but should serve throughout the entire year and be in readiness to present to the next session of the Legislature such information as is necessary at the outset in order that a proper budget might be prepared, or under this system, might be properly criticized. It was my idea that this would simply be a bureau of information to give to the Legislature the necessary light and to dispel the ignorance of most of the members which now prevails as to the finances of the State and which is a tremendous problem for one man to study out by himself. I would have considered offering as an amendment to this proposition that we should provide such a budget bureau for the Legislature and for the Governor if it were not for the fact that I hesitate to encumber this proposition with too many details. I have not been deceived into thinking that the Governor under this scheme is going to prepare the details of this budget.

He will put his name to it. He will be held responsible for it, but he will have to have a budget bureau in his office for the purpose of preparing the necessary details. My scheme of having a budget bureau appointed, with its head appointed by joint ballot of both Houses of the Legislature, was criticised by some of my friends who were really in favor of my idea, but it was criticised because they were opposed to having so powerful an officer made a creature of the Legislature which it was to serve. But, this scheme is going to provide for a budget clerk of the Governor who will be the Warwick of the administration; but he might better be attached to the Governor than to any other single officer of the government. That leads me to the consideration of the proposition which was advanced to-day of having the Comptroller revise these estimates. It is my firm judgment that the Comptroller is not a big enough officer to stand in the way of the insistent demands that will be made for appropriations; demands made by the various departments of the State; demands made by the various institutions of the State; demands made by the members of the Legislature; and last, but not least, the demands of the schemers and the promoters that infest these halls during every

session of the Legislature, seeking to commit the administration to new and expensive programmes of reform. The Comptroller should be a critical officer and not one to initiate a financial programme: It is preferable in every way that as between the Comptroller and the Governor the selection should be the Governor. It should not even be a board. We need to concentrate responsibility upon the Governor, not because he is the entire administration, but because he is the head of the administration, the chief officer of the administration, elected by the voters of the entire State, but not alone that: In my own judgment, chiefly in order to educate the Governor at the outset of his administration upon the subject of the finances of the State. It will make him more discreet about committing himself to a programme of new schemes, new functions of government, new officers and new jobs. He needs to ascertain the facts as to the present needs of the government, the present appropriations that are needed to carry on the government as it exists. He needs to consider the estimated revenues of the government before he commits himself to a programme of something new. At present the department heads, and these various promoters of new ideas have been pulling the wool over the eyes of both the Governor and the Legislature for years and years. If they can do it to the legislative leaders who have had many years of experience in the Legislature, how much more are they going to be able to do it to a green-horn Governor, unless he is going to be compelled by a programme of this kind to consider the entire needs of the State at the very outset and to determine his entire budget of expenditure and his entire estimated revenues. How many Governors have known anything about the State's finances at the outset of their administration? The fact is that from Governor Hughes down in the late years of our history the Governors of this State have been showing the people how to spend the people's money rather than how to save it; and I therefore am in favor of giving this responsibility to the Governor in order to give him a different toy to play with so that he won't be thinking that he must make his record by devising new ways to spend the people's money.

Governors for years have been preaching economy and then compelling extravagance by urging the State to undertake new functions and establish new boards and commissions. If this passes, the Governor will realize his duty, by this mandate of the Constitution, which is to conserve the proper needs of the government, the moneys of the State, and not to spend them. If he fails to get the psychology of his job at the outset he will find in making up his budget that new functions cost money, and he will have to count the cost. This would compel him to study the finances of

the State at the outset and not at the close. At the close it is too late for him to correct his mistakes. I would not consider for a moment the proposition of having the Legislature limited to reducing and striking out items and not having the power to increase items except for the fact that the Governor would not feel his responsibilities. He would not make the necessary effort. He would not stand the pressure of the advocates of expenditure. The Albany woods are full of such advocates, every year striving to get their hands into the State's treasury for the satisfying of their particular hobbies. It is the curse of every administration and it takes a strong man to stand up against their advances, and say No, and it is only when a Governor or any other man in responsibility is fortified with a knowledge of the finances of the State that he is able to stand up and give a good reason for saying No. If the Governor could dodge that responsibility it would be fatal to this scheme and that is why it ought not to be for the Comptroller or a board. It ought to be the strongest officer in the government, to lay out such a plan. Having done this at the outset of the session, and having learned something of the finances of the State, which is hardly likely under the present system, then he is in a position to take up his other labors with the Legislature and provide for new functions if he will. If he does that he will not be so apt to commit himself to an expensive program of reform. It will pay the State to educate its Governors in finance at the outset of their administrations. That brings me to the subject of publicity. Pitiless publicity is one of the greatest factors for good government. At the present time the work is carried on in the quiet by the Chairmen of the two Finance Committees. This is no reflection upon these Chairmen. The Chairman does most of the work alone, and is entitled to great commendation for his self-sacrificing and tireless efforts. But the Legislature knows nothing about it; the people know nothing about it; the press know nothing about it, until the report of the Committee near the close of the session. There is then scant time for deliberation. It is too late to criticise it and to do it over again. Too many other bills are engrossing the attention of the Legislature. There should be a complete financial—complete financial information in detail at the outset in the possession of the Governor in the preparation of the budget as a proposal, and a complete opportunity for information in the hands of the Legislature in order to properly criticize that budget when presented by the Governor. The Governor should have a bureau, a budget bureau, for that purpose, serving during the entire year. The Legislature should have a bureau for that purpose, serving the entire year. There should be a preparation of a balance sheet of proposed expenditures

and estimated revenues. There should be a complete financial program at the very outset. This should be as the result of public hearings before the Governor, personal examination of the heads of departments at the public hearings. And this will lead the newspapers to be able to print as the days go by and that examination progresses, information as to the various departments of government which would entirely escape the newspapers and the public if they were to await the time when the entire budget is presented to the Legislature and when no newspaper could carry the entire subject and no person in the State would read it all. The legislative committees should hold public hearings and publicly examine the heads of these departments, and with the information in their possession given to them by such a budget bureau, they would be in a position to thoroughly grill every head of a department.

And then there should be deliberation in each House, and having the Governor and other State officers participate in this debate and in this deliberation will intensify the interest and compel a more critical consideration. Information will be obtained which no chairman of a Ways and Means Committee could ever remember. It is totally impossible for any chairman of Ways and Means to stand upon this floor and to answer offhand any question that is presented to him with reference to any detail of the budget. He must needs examine his record in order to answer and the debate is therefore a most unsatisfactory one except as we are considering a large proposition and one which has engrossed the attention of the Legislature. But if we have the heads of the departments here to answer any inquiries that are directed with reference to details, those heads of the departments ought to be in a position, and this will compel them to be in a position, to make answer and to furnish the Legislature with the necessary information to lead to an intelligent budget. Since this is a joint function of the Legislature and the Governor, I see no objection whatsoever to having the Governor appear upon the floor of the House or the Senate or be requested by either House to so appear and to engage in a discussion of the budget. Finally, there is the consideration of the budget as a whole at one time. Each appropriation should be considered in the light of every other appropriation. The whole budget should be considered in the light of the estimated revenues of the State. This is a prime *desideratum*. At present there is no member who is able to keep track of the bills that pass from time to time throughout a session and be able to tell how much money has been appropriated either by this House or the other House or both together. No appropriation has absolute value; only relative value to be determined in the light of the

needs of the State as a whole. This is the only intelligent method; to consider them all together and by a process of elimination weed out the relatively unimportant, and that is what the Governor does now. He has the advantage of having all these bills before him in the thirty-day period, with the exception of a few which may have passed throughout the session. But he is handicapped by the fact that he can only veto. He can not construct a new financial programme. He ought not to be given the power to finally construct a new financial programme, and I believe that this proposition which is presented to this Convention furnishes an intelligent idea. And finally there is the printing of the bill in its final form, not required by this amendment, but by another which we have already approved; the printing of it in its final form so that every member can see exactly what he is voting upon. And that brings me to the last consideration, as to the passage of bills, after the passage of the budget. I would not think of doing otherwise. We have accomplished all that we should try to accomplish when we have made the members of the Legislature think in terms of the State before they think in terms of their own district. They ought to be given this right of self-expression. The Governor is likewise given the power to veto any such bills which come to him after the budget. But these bills must be separate bills and they are for a single work or object, which would prevent any riot of bills covering the entire scheme of the budget. No harm can come of trusting the Governor to stick to his financial programme, and if he will not stick to the financial programme, you have condemned your whole budget plan already. It is laughable to think that any one will believe that log-rolling will cease and determine under a simple executive budget. "A man's a man for a' that" is equally applicable to the Governor. I have not been deceived into thinking that log-rolling would cease. It will simply have a change of venue. Instead of members log-rolling with each other, they will log-roll with the Governor and it cannot be prevented no matter what scheme you devise. I have a picture of the Governor and members working in pairs, each chopping off his share of the log, and this would be intensified if you have a stop gaff on all self-expression by the Legislature. Moreover, it is a great mistake to consider that log-rolling on special appropriations by members of the Legislature furnishes the chief avenue for the escape of the State's money. As a matter of fact the special bills that pass both houses and receive the approval of the Governor do not amount to over two or three per cent. of the entire budget of from sixty to sixty-five millions, and that is a pretty high estimate for some years. It is the department heads who refuse to be helpful to the Legislature and to furnish them with the necessary

fair information as to their needs that is partially responsible or extravagant. It is customary for these heads of departments to ask for twice as much as they need on the theory that the Legislature is going to cut them down. If they get the money they can use it, and if they don't get all they ask for, they are going to get enough anyway. That is the theory upon which the heads of departments have been proceeding for years and years, and with that information and detail with reference to their departments not in the possession of the Legislature, not in the possession of the Governor, they have, as I said before, been able to pull the wool over the eyes of both the Legislature and the Governor. Extravagance has been due to the Governors themselves, with their new commissions and jobs and offices to carry out pet schemes for personal aggrandizement; and it is the various organizations of all kinds which bombard the Legislature every year by new ways of spending the money of the State that are most largely responsible for the fact that in the last ten or fifteen years to twenty years we have quadrupled the budget of the State of New York. Whereas it was about fifteen millions when the last Convention was sitting, it is now sixty-five millions.

It is not the special bills that my friend Mr. Smith has called attention to. It is these other things more than that which will be matters for serious consideration. We have heard a great deal from Mr. Smith with reference to the bridge bills. They have been called local bills. Let me call your attention to the fact that these bridges have been built in various parts of the State because the State has been developing a system of highways, trunk lines, not for the benefit of the community, but for the benefit of the entire public of the State who are able to travel over those highways in automobiles. We have been building bridges because the State has committed itself to a programme of building a great barge canal which the city of New York more than any other community has foisted upon the State; and we have been compelled by reason of the fact that this canal has divided farms, has divided communities, to build bridges in various parts of the State. Can we honestly and fairly say that that is a local purpose? Can we honestly and fairly say that where it seems to be necessary to build an improvement to one of the State's institutions that happens to be in a man's district, that it is a local bill? I am not one to approve of having a game farm in every part of the State, or a fish hatchery, or an agricultural college. I disapprove of that scheme, but where we have those institutions, and it is necessary to make repairs and improvements, can it be said that it is a local proposition, that the State should not take care of its own? Now, we have had an extraordinary

year this year in dealing with the appropriations. It has become a vital problem in the State government. It has become an issue between the two parties of prominence in this State, but this and possibly last year is the first time that we have had one party pitted against another on the proposition of spending or saving the State's moneys. We have heard something here to-day about the Minetto bridge bill and I have a most distinct recollection in the session of 1914 that I was in favor of a legislative budget and not having any bill passed by this House until we had approved the main appropriation bills—the supply bill, the construction bill, and the appropriation bill for the ensuing fiscal year; and that no special appropriation should be made until after we had given full consideration to and had passed the main financial measures. When the Ways and Means Committee reported its first bill, prior to the time of consideration of the main bills, it happened to be the Minetto bridge bill. And I stood upon this floor and made a motion to recommit that bill to the Committee on Ways and Means. I made the argument at that time that we ought to have a consideration of the entire needs of the government at one time before we passed any special appropriation bills. And my friend, the gentlemen from New York, voted, with all his adherents, in opposition to my motion. Two-thirds rule, as he suggests? It would not be effective unless you made it an unanimous rule. I believe I got about six votes in favor of my motion to recommit the bill and every Democrat voted against me, and yet there was something of a financial issue which was involved in the State during the year 1914 when the Senate was Democratic and the Assembly was Republican. I offer this, not to discredit in any way the gentleman from New York, but only to show you the ineffectiveness of even a rule of two-thirds, it means nothing. There is absolutely no sense in amending this proposal in any such respect and I believe I have given you sufficient reasons why we should provide for self-expression by members of the Legislature with reference to the needs of their districts after they have given consideration to the needs of the State. Now, we have heard a great deal to-day about the number of bills that passed this House. I was not here when Mr. Smith made his itemized statement of those various special bills but I desire to call the attention of this Convention to the fact that while there were a number of such bills that passed in the last days of the session there was just one of those bills that passed the Senate and that bill was vetoed by the Governor. How much harm was done to the State? Not a particle.

Mr. A. E. Smith — There were seventeen of them.

Mr. Hinman — Oh, no.

Mr. A. E. Smith — Oh, yes; seventeen of them. Seventeen of them became laws.

Mr. Hinman — Has the gentleman presented the laws?

Mr. A. E. Smith — Yes.

Mr. Hinman — Has the gentleman the details? If the gentleman has the details to prove that, I should certainly have to apologize for having made the statement; but I have it from the chairman of the Finance Committee of the Senate that only one such special bill was reported out of the Committee on Finance of the Senate and if those bills were carried in the construction bill or the supply bill that is a different proposition; I am not so sure about that, there may have been some of them included, after their consideration as special bills.

Mr. A. E. Smith — I desire to say to him that there were seventeen of them that became distinct and separate chapters of the laws of 1915.

The Chairman — Has the gentleman any facts to present to the Convention as to the total amounts of those bills?

Mr. A. E. Smith — Yes. Senator Wicks' bill for a canal bridge; Assemblyman Maier's Waterloo bridge, erecting a bridge at Waterloo, for lowering the canal bridge, \$3,000; Assemblyman Maier's bill for constructing a foot bridge at Seneca Falls, \$5,000; reconstruction of the Potsdam school, making \$100,000 immediately available; Assemblyman Tallett, to fix up the wall of the canal feeder, city of Oneida, \$4,000; Senator Brown's Minetto bridge bill, reappropriating \$50,000 with an additional \$300,000 for the Lyons Falls bridge after it was decided by the local authorities to let a trolley company use it; Mr. Norton's Schenectady-Scotia bill, \$5,000; Mr. Pratt's bill for the Great Meadows School building, \$20,000; Cristman's bill to clean out Fulmer creek, \$500; Macdonald's bill for the removal of bridge, \$12,500; to reimburse Philip Becker, \$350; for the canal bridge at Yorkville, \$25,000; Whitesboro canal bridge, \$11,000; Rye river, Watervliet, improved, \$4,500; Lockport paving assessment, \$3,128.82; 25th New York Volunteer Cal. monument, \$250; Alleghany river, Olean creek improvement, \$150,000.

Mr. Hinman — Now, Mr. Chairman, I am surprised to find that they became laws. My information was not accurate. So far as I can see, they were absolutely necessary appropriations and for the needs of the State and not for the needs of a locality alone; for the care of the State's own property in the construction of these bridges; connecting highways of the State that are main trunk lines in our system of highways, across canals constructed by the State, and dividing communities, as in Wayne county at Lyons, to which attention has been called; repairing Potsdam

Normal school, which has gotten into a pitiable condition, one of the State's institutions; building a school house at Great Meadows, for the reason that the State has its employees in Great Meadows Prison, who have no school facilities, who have their families and children there, and the State says their children must have a full common school education. Why shouldn't the State build its school house upon prison grounds, for the accommodation of the employees of the State and of their children? And when you come to total up the whole of these special appropriations to which he has called your attention, seventeen of them in all, I will guarantee you have not half a million out of a budget of sixty-five millions. The total is \$444,408. What kind of a proposition is that to make so much noise about when we are considering a budget of sixty-five millions? I have heard so much to-night about these special bills throughout the session of the Assembly as well as in this session that I deem it wise to give some attention to the proposition and to call the attention of the Convention to the fact that it is not that which is the main item for consideration. The main proposition is that we shall have proper information; revision of the estimates at the outside; adequate publicity at every stage of the proceeding; proper deliberation and discussion of the entire budget; and that the entire budget, so far as possible, shall be passed all at one time, when every item of the budget can be considered in the light of every other item; and, finally, after the members of the Legislature have given their attention to the needs of the State, let them give their attention to the needs of their districts, so that just such similar bills as that providing bridges that are needed because of the State's own works, repairing of institutions that happen to be in the districts and which are brought directly to the attention of that particular member more than any other member of the Legislature, so that he can go back to his district saying he has done his duty, and if the Governor saw fit to veto it, he himself has given concrete expression to what he thought was necessary for the State to do. I certainly trust that this budget proposition will pass and that it will pass unamended.

Mr. Quigg — Mr. Chairman, Mr. Hinman asks us to vote for the budget as it stands but I am obliged to say that his argument has added very considerably to my embarrassments in the desire that I have to vote for it. Mr. Latson, making the argument to us, which he has, which was the argument of an attorney addressing a court, has also added to my troubles. Mr. Smith's proposition to-day with respect to the Comptroller, I think, deserves attention, but I am especially troubled by the function that the Governor, on the whole, is to play in this scheme of a budget.

There can be no doubt, I suppose, that every member of this Convention believes that there should be something in the nature of a budget adopted here and that it should originate outside of the Legislature and should be ready for it. But, Mr. Chairman, there can be no harm in going slow on the matter. There can be no harm in the Committee in charge of it taking into careful consideration what has been said in this debate and in amending the bill so that it will represent more than it does now a consensus of opinion in this Chamber. Mr. Chairman, I do not suppose that the Committee needs to amend the bill at all in order to pass it here, but I do believe that it needs to amend it considerably in order to make sure of the votes that we need to pass this instrument. I am not going to say, as Mr. Wagner had the audacity to say to-day, that if we pass this budget the Constitution will be beaten. Nobody can safely assume the prophetic capacities of a seventh daughter of a seventh daughter and make much headway in a body of this kind, but I do say that where there is widespread objection in an assemblage of this kind to anything, it is safer to take those objections into consideration and to get something that will bring about more harmony of opinion. Now Mr. Smith's propositions struck me as being very sensible — if not exactly in the form in which he put it — as so worthy of consideration that I hope the chairman of the Committee on Finance will take them up in the spirit in which I know Mr. Smith proposed them. I have looked around here to see signs of partisanship, of Democratic sentiment or Republican sentiment, and, except on the question of the reapportionment, which was a political matter and is a political matter, it has been impossible to find any. And right on that subject, I have got to say this for Mr. Smith, that when it came to the consideration of the enlargement of the Legislature in order that we might provide popular representation all through the State, and especially for the benefit of New York city, he would not take it. Why? Why, he said he was not going to get representation for New York at the expense of inefficiency in the Legislature, and that he wanted a smaller one and that bigger Legislatures would be ruinous. That stamped him, to me, as a man who was trying to help us pass this Constitution and not to embarrass us in the passage of it. And considering, as I do, that he would be an ornament to any deliberative assembly anywhere, I hope that his propositions here, which I know appeal to a great many men, and a great many Republicans, Mr. Stimson, will receive the thoughtful consideration of your Committee before we finally pass this bill. Now, Mr. Chairman, I want to say something about the Governor, and with respect to it, I must tell you one of the incidents of my life as a reporter. When I was a

boy and a reporter and getting my point of view about all kinds of things, being a reporter, it was my good fortune to have business with all the great men on these continents, and at one time or another I saw almost every such man and talked with him for my newspaper about the thing that was then engrossing public attention. And it had a tremendous effect on my point of view, for I was forming that point of view then. Now, among those men was Sir John MacDonald of Canada, I suppose, the greatest man, the greatest statesman, that has been produced in a country which certainly cannot be said to be deficient in the production of able men. He was talking about this very thing, the matter of a budget, and he was contrasting the Canadian system, which of course is the English system, with our American system, showing that theirs was very much more democratic, very much more prompt in anticipating the wants of the public and very much more prompt in effecting them. And he was wondering, as he told me, why we could not have a President or Governors in this country who would be as the Crown is in Canada — and I am using his own words as I printed them at the time — a front-door, a mere front-door, and a system with the responsibility of popular sentiment expressed in a party with a prime minister who was the focus of it and the instrument of it. And he said that that was much the more democratical government. Perhaps it is.

I made this answer to him, which I make to Mr. Stimson about this plan: Our people are not used to it. You know six generations have been working under the Constitution that we have now, with the Governor off by himself, separated and distinct; with the Legislature off by itself and forbidden to go anywhere near to the Governor, and the judiciary placed off by itself, the functions of each of them separate. And six generations of Americans, and New Yorkers especially, have grown up under that system and they are used to it and you are presenting something to them that will, I think, make them pause. Now we bring in a lot of foreigners, all sorts of foreigners, but it is only a little while before they have become used to this American system of ours and have become as much American and Anglo-Saxon as any of the rest of us in our devotion to this plan of keeping these functions separated. Now, Mr. Stimson, what do you do? When you provide that the Governor shall have the exclusive originating of this budget, that he shall get his information as he can and as he would anyway — but he is to have the exclusive function of presenting it — and when you say that the Legislature can do nothing about appropriations until it is based on his plan, then you compel precisely what you provide — not, as Mr. Hinman expressed it,

that the Governor might go to the Legislature and express his views. He can express his views to the Legislature now. But you are compelled to provide, in order to carry out your plan, and you do provide, that the Governor, the heads of departments and the Comptroller — and you place the Governor right along with the heads of departments, and I do not know who the Comptroller is, and that must be explained before I can vote on this bill intelligently — “The Governor, the heads of such departments and the Comptroller shall have the right, and it shall be their duty, when requested by either house of the Legislature, to appear and be heard in respect to the budget during the consideration thereof and to answer inquiries relative thereto.” So, for the first time, I think it must be, in the history of the country — certainly for the first time in the history of this State — and we have a proposition that the Legislature may say to the Governor, “Come here!” and the Governor is bound to come. To come for what purpose? If all of the powers that we hear of in the contemplation of the Committee on Governor and Other State Officers are to be concentrated on this man, then for the purpose of saying to the Legislature “Do it” and “You must do it” — and I listened to what Mr. Hinman said. He did not expect to prevent log-rolling by this bill; he simply expected that it would be transferred to the Governor and the Legislature instead of to the legislators among themselves. So you are going to have the Governor say to the Legislature if he comes in obedience to its direction, or if he wishes to come, for you provide he may if he wishes — you will have him going to the Legislature and saying, “Now, do it!”, and “You understand perfectly well what will happen to any of you if you do not do it.” And, Mr. Chairman and gentlemen, whether he says it or not, that is what he will mean and that is what they will know he means.

Or, if it happens to be a Legislature of a different political faith that expects to run him down and knock him out, then he goes there, in obedience to their directions, to be heckled, to be asked impertinent questions, and it is bound to be an undignified treatment of the Governor of this State. Now up to this time we have tried to keep him where, if he chose to keep himself, he would be the object of universal respect. Don't let us put him in a position where he is likely, is bound, in the heat of partisanship, to suffer degradation, to suffer insult, to suffer disrespect. We ought to keep the Governor where he is and we ought to keep the Legislature where it is. We cannot change our American system. Certainly you ought not to change it by any hybrid, hyphenated attempt to make a system that is half American and half English. Now, I do hope that the Committee will give further consideration to this question and not compel us to vote on it in its present

form. There are a great many Republicans who do not want to do it who do not want to defeat you, who know the work that Mr. Stimson has done, who know how he has spent all these months working at this, and who know the consideration, the thought, the earnest thought that he has given to it. We don't want to vote against it, and yet we don't like this provision about the Governor and the Governor's powers and the Governor being forced to go to the Legislature, or having the right to tramp in, as Cromwell did, and say "get you gone for better men." We don't want to be asked to do that, and I hope in the interests of harmony here, and harmony that will include him, harmony that will include Mr. Smith, for after his presentation of his ideas and their acceptance here in some form or another we do not expect him to go out and try to defeat this Constitution because he is not that kind of a man who would attempt to do it either; but I do hope in the interest of getting the result that is more in attune to all our consciences and feelings the matter will receive some further consideration.

Mr. Sheehan — Mr. Chairman, I am heartily in favor of a budget system. If this proposal cannot be improved, I will vote for it, as it stands upon our files. If I have to make a choice between a budget prepared by the Legislature and a budget prepared by the Governor, I will vote for a budget prepared by the Governor, and I do this largely because of my ten years' experience in legislative councils. No experiment can make matters worse than they are. When in 1885 I first entered this chamber and occupied a seat here, the administrative expenses of the State were seven millions of dollars. To-day they are forty-two millions of dollars. The statement of that proposition demonstrates the urgent necessity for some radical change in working out a financial policy for the government of the State. I do not expect to see the financial affairs of this State economically administered. I never expect to see the marvelous results in State or governmental administrations that we are constantly witnessing in the conduct of our great business and industrial concerns. Extravagance in governmental expenditure is one of the penalties we pay for our liberties. But when we see the annual expenditures of the State increased in thirty years from seven millions to forty-two millions of dollars the fault cannot be wholly attributed to extravagance upon the part of the Legislature. It is the result, Mr. Chairman, in my judgment, of a combination of extravagances, inefficiency and unwieldy distribution of power. This plan that we have before us may not put an end to extravagance. I do not believe it will. But it does make for more efficiency and more publicity

and does permit the fixing of responsibility which is always desirable. I do not believe in unlimited concentration of executive power, for outside of the principle involved, we have had governors wholly unfitted to grasp the infinite machinery involved in the administration of the affairs of a great commonwealth like ours. We are probably going to have such governors again; and it is with that thought in mind that I desire to offer a suggestion that may not stand the light of debate, which I may repudiate myself after the matter is discussed, if it is considered worthy of discussion; and, therefore, Mr. Chairman, I should like to send to the desk a suggestion in the form of a Proposed Amendment which I will ask, with your permission, to have the clerk read.

The Chairman — The clerk will read the Proposed Amendment.

The Secretary — By Mr. Sheehan: Amend proposed constitutional amendment, Printed No. 778, as follows:

Page 1, strike out eleven and insert in italics as a paragraph the following: Public hearings on such estimates shall be called by the Governor, and there shall be associated with him at such hearings the Lieutenant-Governor, the Comptroller, the Attorney-General, the Temporary President of the Senate, the Senator receiving the next highest number of votes for Temporary President of the Senate, the Speaker of the Assembly and the member of Assembly receiving the next highest number of votes for Speaker. The Governor shall require the attendance of heads of departments and their subordinates and such estimates shall be revised according to the judgment of a majority of such officers. If the Governor shall not concur in such revision he shall make separate itemized estimates of the financial needs of the State, except for the Legislature and the judiciary. Page two, strike out lines one and two. Page two, line twelve, after "certified" insert in italics "including the separate itemized estimates if any made by the governor." Page three, line fourteen, strike out "that". Page three, line fifteen, after "judiciary" insert in italics "and items of estimates submitted in which he did not concur, which".

Mr. Sheehan — Mr. Chairman, if the present expectation is realized, we are to have, as the sole elected officers of the State a Governor and a Lieutenant-Governor, a Comptroller, and an Attorney-General.

Mr. Cullinan — Mr. President, I would like to ask the gentleman a question: What are we to understand by your expression "If the present expectations are to be realized"?

Mr. Sheehan — I will answer the gentleman from Oswego, that it is common report, and has been for weeks published in the newspapers and not contradicted, that the Committee dealing

with that subject is to report a proposition to the effect I have stated.

Mr. Cullinan — That is the only basis for your statement?

Mr. Sheehan — I think it has substantial authority behind it. Now, Mr. Chairman, under this suggestion, the budget would be prepared by these four elected State officers acting in conjunction with the President pro tem of the Senate, the Speaker of the Assembly, and the minority leaders of the Senate and Assembly. The estimates are to be revised according to the judgment of a majority of those officers. But if the Governor shall not concur in such revision, he may make a separate itemized estimate of the financial needs of the State, and as to items which the Governor does not concur in, this proposition of mine gives him the right to veto. The point of the suggestion is that the Governor shall in the first instance consult with the elected State officers and with the experienced leaders of the Senate and the Assembly. The thought came to me largely because of the experiences I have had sitting as a member of the Judiciary Committee and of the Committee on Legislative Powers. I have seen men who have come before those various committees subjected to severe and intelligent questioning by members of the committee, and I have seen the Chairman of those committees benefited largely as the result of the advice received from the members of those committees and by reason of the questions that had been put to the witnesses before the committees. I cannot help but think, Mr. Chairman, that it might be a profitable thing for the State if we had a budget committee composed of experienced men like I speak of who, when gentlemen come before the body asking for appropriations, would have the ability and the courage to get at the truth. The hearings being public, the public would be informed not only of the reasons why the appropriations were asked, but the reasons then given by the members of the budget committee why they probably should be disapproved. In other words, Mr. Chairman, my sole thought is to see if we cannot give the Governor the power — practically the power that Mr. Stimson aims to give him, but associate with him, for his guidance and for the benefit of the State, this body of experienced men. Now, as I said before, Mr. Chairman, the thought is new; I don't know, when we get through with it, that I am willing to stand sponsor for it; I am hardly prepared to offer it as an amendment; I make it as a suggestion, as to whether or not, on the whole, we cannot surround the Governor with a body of men who can help him prepare this estimate. If we do it, it seems to me the result will be beneficial to all.

Mr. Byrne — Mr. Chairman and Gentlemen, I had no more idea when I entered this Chamber this morning and took my seat

and looked over at Mr. Stimson and listened to his presentation of this amendment, that before I went home to-night I would speak on it than I thought that I would fly. But I cannot keep my seat any longer. Senator Brackett this afternoon said that the faggots were gathered and the fire was burning. I suppose he meant *Roma locuta est* and Rome having spoken, it is all over. I don't think so. I don't think so. I am unwilling to believe that when suggestions of the character of those that have been made regarding this bill, have been advanced in a body of this character — that any set of men in this Convention are unwilling to change their views. If ever I want someone — I hope Mr. Hinman won't feel that I mean any offense; I don't — but if I wanted to get a cause, I hope you would argue against me. I wondered as I listened to the gentleman, Mr. Chairman, whether his speech was prepared before he had modified his views, as he said, or afterward. At times, when I heard him say that Governors have preached economy and practiced extravagance, I thought he was talking in favor of Mr. Smith's and Mr. Wagner's suggestions. And then, later on, when he said, why, it won't stop log-rolling, it will only change the venue, when Mr. Stimson's idea was to stop that very thing, again I thought he was talking against the bill. Gentlemen, this is a very serious subject, as Mr. Latson says. It is a subject that we should think well upon before deciding, and I want to say this to you at this time. I hope you won't think I am attempting to lecture; I am not. We are to make a Constitution which the people want, and not one which we think they want. Now, several things have been pointed out here. Of course, as far as those bills which have been spoken of are concerned, I meant to refer to that, which Mr. Hinman calls State-wide bills, and, by the way, he was wrong on that proposition by a ratio of nearly sixteen to one. He said only one went through and there happened to be seventeen. Now certain things were pointed out here to-day: The necessity of a budget, I assume we all agree upon that. But the question whether the Governor shall be the one to initiate that is a very serious one. "There is safety in numbers" says Rory O'More. I think there is safety in a number of people initiating a thing of this importance. Governor Sheehan has suggested a board. Well, call it board, or body if you like. Mr. Hinman says the Comptroller is not big enough to resist the pressure that would be brought to bear upon him. What would make the Governor big enough to resist the pressure that would be brought to bear upon him? I think it advisable to put this in some board. It is merely a suggestion, I am not as afraid as Governor Sheehan has said. The Governor, the Comptroller, the Chairman of the Ways and Means Committee and the Chairman of the Finance Committee; let them initiate the budget.

That would not require a great change in this matter. And then there is another question presented. You say the object of it was to prevent the passage of bills such as referred to by Mr. Smith this noon. But it doesn't prevent it. He has asked the question of several people and it has not been answered. No one who has spoken in favor of it has answered the questions he asked. It is not going to prevent the very thing you say you want it to prevent and therefore I say let those bills if they are to come in, I have no objection to that, be passed only by a two-thirds vote. Now again you say that the Governor, the heads of departments, et cetera, shall have the right and it shall be their duty when requested by either house of the Legislature — well that means of course by a majority of that House. Why limit it to the majority? The minority would be more likely to ask questions more pertinent than the majority at times. Majorities are not always right. I remember when a little boy at school, one of the first little pieces I ever learned, spoke about a minority. The greatest heroes of this world have been in the minority. Gentlemen, the minority should be permitted if they think it necessary to call in the Governor or the heads of departments. That is if you are going to let this initiate with the Governor. I sincerely trust that you are not. Now in conclusion, gentlemen, I have only this to say: Mr. Quigg has suggested some sort of a compromise. I think it will be very simple to make some slight changes in this amendment for which we can all vote. I sincerely trust that that will be done.

Mr. D. Nicoll — As one of the members of the Finance Committee representing the minority, I desire to say a few words upon the general subject without considering the various amendments which have been proposed. With one exception the committee was unanimous in presenting this report to the Convention. I do not mean to say by that that all of the committee agreed at once upon the various provisions which are found in the Article, but we reached the result now submitted to the Convention after a most patient examination of the question and the most deliberate interchange of views. When we assembled we were confronted with the fact that during the past two decades the governmental expenses of nation, state and municipalities had increased out of all proportion to the increase in population or the increase of wealth, and that has been due in large measure to reckless extravagance and wasteful government. The problem presented to the committee was whether with all these facts staring us in the face we should pass them by and do nothing, should leave things as they are, let extravagance run on until representative government proved itself to be a failure or whether

we should do what we could to put a stop to it. Under the guidance of the chairman of the committee, Mr. Stimson, we addressed ourselves to the task. And I desire to say to you that no man who sat on the Committee on State Finances could possibly resist the testimony produced before it. It was the most complete case I ever heard. We had two Presidents of the United States representing both political parties, two governors of opposite political faith, distinguished legislators, both national and State economists and publicists of world-wide reputation, and all of them agreed that some such new machinery as this was necessary if we were to check the ever growing tendency toward extravagance in government. In addition to this we had the benefit of the mature conclusions of many of the members of this Convention who presented their amendments and addressed us in support of them. There came before us Mr. R. B. Smith, Mr. A. Smith, Mr. Austin, Mr. Saxe and many others, all of whom had been studying this subject from different angles and who enforced their conclusions with well reasoned and well seasoned arguments. And we were aided in our deliberations by the chairman of our Committee of whom in justice I must say that no man ever entered upon so great a task with more enthusiasm, more constant study, more tact and more good nature than he displayed through the extended sessions of the Committee. And now, gentlemen, from all this testimony and from all these suggestions we produce this Article. It is a mistake to suppose that thorough deliberation has not been given to every part of it. It is no exaggeration to say that every sentence and every word was discussed and argued and fought over in the Committee on State Finances. Every one of the suggestions and objections raised here by every person who has spoken since this amendment came before the Convention was considered by the Committee and earnestly discussed and debated. What did we first undertake to do? We first sought to discover the infirmities of the present system. For unless we discovered obvious infirmities in the present system there was no reason for change. Certainly no member of the Committee was inspired to change for change sake. I should say the feeling was just the opposite. The question, therefore, was, what were the infirmities, if there were any, in the present system? And these infirmities, as we discovered them, were a lack of publicity and too much secret and invisible government in making up so important a matter as a budget. That was well pointed out by the chairman of the Committee on Ways and Means of the last Legislature who has acknowledged as much to us. The next thing that we discovered, the next infirmity of the present system, was lack of deliberation intensified by the use of the emergency message in the closing

hours of the session. And we found that throughout the whole business of making the budget, both in and out of the Legislature and in the Executive Chamber, there was a lack of that deliberation which so important a subject requires. And then we found that there was a lack of a formal opportunity for criticism, that is, a lack of an opportunity for one branch of the government to criticise the other. And these being the manifest evils of the system, our effort was, so far as we could, to cure them and make it impossible to continue them in the future government of the State. This amendment, therefore, considered as a whole, is designed to correct these evils and to establish a system of budget making subject to the criticism of the Legislature which experience has shown is necessary in the administration of all republican governments. What are the objections that are now made to it? Some say it is too radical. Mr. Quigg has just said that six generations are used to the legislative budget and that it will be a great shock to the State to discover that there has been a change from a legislative to an executive budget. I certainly am not in favor of any radical measures in this Convention. I am quite aware of the fact that unlike previous Conventions we were called together by a very slender majority of the people, and that we have no warrant for doing anything that is radical, much less revolutionary. But is there anything radical about this? What have we done? The burden of making the budget now rests upon the Legislature. We have transferred that burden to the executive. The Legislature now initiates it. Under our proposal the Governor will initiate it. In other words, we have at last put the horse before the cart instead of keeping the cart before the horse. I find nothing very radical about that. The Governor retains his full powers. The Legislature retain theirs. But at last we have made a start in budget making from a source from which it ought to come. Some other objector says the duty ought not to rest upon the Governor at all. One says upon the Comptroller. It seems to me that the Governor is a much more suitable person to initiate the budget as the head of the State than the Comptroller, and, if possible, we desired to reserve to the Comptroller the power of criticism and auditing instead of the power of initiation. Others say, don't have the Governor alone, have a board; and I am bound to say there was a time in the course of our deliberations when I was captivated with that idea. I thought it would be better to have a board and perhaps a board of the officers indicated by Mr. Sheehan. The difficulty about that was that it was tried in the statute of 1913 and proved to be inoperative. Another objection was that if you divide the responsibility between the different heads of departments you fail to fix it where

it belongs. Other objectors say, you are making too great a figure of the Governor. You are magnifying him. I heard my friend, Mr. Wagner, in his eloquent speech say we are going to make him a superman, a man from Mars. On the other hand, Mr. Quigg says the difficulty about this scheme is that we are going to belittle the Governor and if you are going to do it that he will amount to nothing. Now, which is it? The fact of the matter is, gentlemen, we are going to do neither one or the other. We are not going to make the Governor greater or the Legislature less great. The great mistake in the discussion has been in assuming that the Governor has now no legislative power. Why, the Governor has great legislative power. When he exercises the veto, he exercises legislative power in the highest sense and in that respect he acts in coöperation with the Legislature. And I say that there is nothing extraordinary or novel or radical about it, after all, for why should not the Governor of the State having prepared a budget be subject to examination by the Legislature? I am assuming that the men who go to the Legislature are average citizens. I certainly am not going to assume that we are going to blindly follow the lead of the Governor or that they are going to insult him. It is a monstrous assumption and ought not to form the basis of our calculation.

Now, gentlemen, there is one aspect of the case which has caused me some concern, and that is the provision which allows the Legislature after the budget has been adopted to proceed to the passage of special and local bills. I was opposed to that, but I had my day in the Committee. I presented my views which were most amiably and patiently considered by other members of the Committee. I thought I saw that we might not accomplish the result that we were aiming at. I had in mind our unfortunate experience in the Constitution of 1894, where we gave authority to the Governor to send in messages in case of necessity, a power which has been so perverted as to be made the chief instrument of extravagant legislation, and it seemed to me that under those circumstances in order to make sure that this amendment might accomplish what we had in view that it was better that the Legislature should not have the power to pass local and special bills after the adoption of the budget except by a two-thirds vote. But it was pointed out by the chairman of the Committee, and accepted as a satisfactory explanation by me, that the postponement of special and local legislation until the budget had been adopted would necessarily minimize the evil and that that was a wiser solution of the problem than taking away from the Legislature altogether the power to initiate such legislation. Certainly this Convention so far has not done anything to magnify

the Governor or to minimize the power of the Legislature. Up to date we have shorn the Governor of one of his powers, namely, the sending in of necessity or emergency messages. We have taken that away from him. We are now providing in this Article that the Governor shall submit himself with the heads of his departments to the examination of the Legislature. Who can say that these provisions magnify the power of the Governor?

On the other hand, we have done nothing to minimize the Legislature. One of the first acts of this Convention was to give the Legislature the right to assemble without the command of the Governor for the purposes of impeachment. Not only that, but to show our good will and confidence in the Legislature we have by a vote of over 100 increased the salaries of its members. How can you find in the proceedings of the Convention so far any discrimination against the legislative branch of the government? Now, gentlemen, of course no amendment is perfect. Do as well as you will it is quite reasonable to expect that when you come out in the Convention valuable suggestions and amendments will be made, but I want to say that so far as any of the amendments which are proposed that every one of them has been carefully considered by members of the Committee, and that we have proposed this Article in the full faith and confidence that we are doing something towards checking the acknowledged extravagance of the State government. We do not think that we have solved the riddle of the universe. We do not believe that by what we have done we are going to bring about the millenium. We are perfectly well aware that human nature will go on just as it has gone on before and that you cannot make a man over by constitutions or laws. We have devised, as we think, some machinery to check extravagance, but the decision will still rest with the man behind the gun. We have believed that as a result of our efforts we have done something which is entitled to the prompt consideration of the Convention and which will, if adopted, prove of lasting benefit to the State.

Mr. Wiggins — I think it is generally conceded by the members of this Convention that the establishment of a budget system would meet with the approval of the members and of the people of the State of New York. From the examination which I have made of the budget as proposed by the bill introduced by Mr. Stimson, I am impressed with the fact that it is a very meritorious measure, but when Mr. Sheehan was speaking a few moments ago he was asked by Mr. Cullinan as to where he obtained the information which he had that there would be four heads of the departments, and it aroused in my mind an inquiry and a doubt which never before had existed, and that is, how many departments are there

to be? Are the heads of those departments to be appointive or elective? I understand that the chairman of the Finance Committee and the chairman of the Committee on Governor and Other State Officers are on speaking terms and see each other occasionally and I assume that they commune with each other upon the subject, and I think that they should take the members of this Convention into their confidence, as they have Mr. Sheehan, and say to us, "There are the cards upon the table; there are the number of officers to be selected; there are the heads of the departments whom we referred to in this very meritorious measure. These are the men in whom you will vest this power and authority,"—so that we may intelligently pass upon that subject with the full knowledge of who those officers may be. It seems to me that the gentlemen of this Convention deserve that confidence from the members of both of these committees.

Mr. Stanchfield — Mr. Chairman, and Gentlemen of the Convention, as a member of the Committee on State Finances, and a sponsor for the principle embodied in this amendment, I desire to say a final word in its behalf. This Committee consisted of seventeen members of this Convention. The amendment we are proposing to you as a result of our labors has behind it the brain, the purpose, the study and the conscientious labor of sixteen of the seventeen members. I desire, upon the threshold of my argument, to have that fact linger in your ears. We had advice from men learned in every branch of finance. We approached the consideration of this subject with minds free from bias, untarnished by prejudice, with a single and a sole desire to give to this Convention and, through it, to the people of the State, a safeguard against graft and scandal in the finances of this State in the future. The scant vote that brought this Convention into being is pregnant with deep significance. It attests beyond the pale of debate that the great majority of the people of this State were satisfied to live another twenty years under the Constitution of 1894. There are in the public mind to-day three topics of supreme importance in which the people of this State are interested. One is the reorganization of the finances of the State; another is judicial reform so as to dispense with the law's delays; and the third is to have conferred upon cities the right of home rule. I state, without fear of successful contradiction, that, of the three, the most important topic is the reorganization of the financial methods of this State. We have endeavored in this amendment as proposed to you not unduly to exalt the Executive, not improperly to cut off and curtail and lessen the dignity or the power of the legislative branch of the government. Quite the contrary. What boots it here how many departments are to make up an estimate and hand it in to

the Governor of this State in November of every year? What difference does it make with reference to the propriety of the adoption of this amendment whether there be three, four, eight or ten? All that we seek here is for a principle, and that is to devolve upon the Executive of this State the responsibility for the initiation of the financial policy of the year. And with that responsibility we must, in common fairness, confer corresponding and proportionate power. The system to which we are addressing your attention is simple in the extreme. The Governor of the State has the right to ask from the various departments irrespective of their number, that represent all branches of the State government outside the judicial and the legislative. And when they have presented to him, whether under oath or by an oral statement or over their signature, is a matter of inconsequential detail, the amounts that those departments require for the ensuing year, we have centered in the Executive the responsibility of saying to the people of the State through the Legislature, I am transmitting to you a budget that provides for all of the expenses and disbursements to be incurred during the ensuing year. Now what are the objections that are urged to this plan? I have listened here with great interest and alertness during the debate of to-day and, so nearly as one can cull out this mass of discussion and dispute these objections, they resolved themselves into three heads: First, it is said the Executive will dominate the legislative branch of the government; Second, you are taking away from the legislative branch of the government powers that it has enjoyed and that it has used during the entire history of the State; Lastly, by virtue of the provision that permits the introduction and passage of special bills after the budget shall have been adopted, you fail to meet the evil at which this amendment is leveled. The most persuasive, the most attractive and practical argument that has been made upon this floor to-day in favor of this amendment consisted in the bills called legislative monstrosities that Mr. Smith read in our hearing this evening. It is utterly impossible under the existence and power of an amendment of the character introduced here that those bills which passed the Legislature of 1915 could be duplicated. Therefore in conclusion I urge upon you, speaking for the entire Committee, with one exception, the adoption of this amendment because it will be, for twenty years, a bulwark and a safeguard for the people of the State against legislative extravagance.

Mr. R. B. Smith — I had not intended to discuss this measure generally, fearing that long association and experience with the Legislature might lead the delegates to suspect that I was prejudiced against any of them, in taking power away from the Legislature and putting it upon the Governor. I will say that I believe

the power of initiating appropriations is a legislative and not an Executive function and that it should be exercised by the members of the Assembly who go back to the taxpayers and account to them for their actions each year when they spend their money. But I am intensely practical. If you wish to swap veto powers with the Governor I am willing to swap if you will do it on the level. My objection to this bill is that it is not consistent with itself and it is not consistent with anything; that on the face of it it is a compromise and I am against compromise of principle on anything. Recalling the paragraph from Hamilton, why divide responsibility? Either the power to initiate appropriations is an executive function or a legislative function. How can you make both out of it, depending upon the whim of the Governor? If the power is to be regarded, if the power of initiation is to be regarded as an executive function, give him exclusive power and hold him responsible and let the people of the State hold him responsible and no one else. Do not permit him to pick out the nice things that please every one and send them into the Legislature and say that this is what I am for, and then send upstairs, and say these other things may embarrass me, you put them over. I mean it seriously. The people should hold the Governor responsible for initiation of legislation and they should hold the Legislature responsible for the exercise of the veto power, or else reverse it and leave it alone. This half-and-half proposition, where there is divided responsibility, where it gives the executive the power to unload the undesirables upon the Legislature, I am absolutely and totally opposed to, and I believe it is unfair in the extreme. I have not the slightest objection to the other proposition. I have serious objection to leaving with the Legislature a divided responsibility and a divided power.

Of course there are some other things compensatory in this. The Governor always insists that all appropriation bills shall be thirty-day bills, and it takes twenty days to educate the Governor as to what it is all about. And we have got six or seven hundred other bills down there on general legislation, turned over to his counsel or somebody else to pass executive approval upon, and they get scant attention. If we start to teach the Governor the finances of the State on the first Wednesday in January, and complete his education by the first day of February, so that after the adjournment of the Legislature he can give his undivided attention to personal consideration of some six or seven hundred bills on the general legislation which are before him, we will have obtained some real value which will be compensatory for the power taken from the Legislature. That is not a thing to be disregarded, either, and I speak from experience.

So far as publicity is concerned: A hearing before the Governor on a proposed appropriation bill. No. We have hearings in the second class cities before the Board of Estimate and Apportionment. And the only fellow that has had the nerve to go there in five years was myself this last year. Nothing to that. That is a farce. Criticism. Well, now, if the Legislature is of the same political party, same political faith as the Governor, let me tell you something. The budget proposed by the Governor is finished when it strikes the Legislature. He still has the power of veto over the bills of the members of the Legislature. Don't anybody fool yourselves about this criticism business, because there is not anything of it. Forget it. Now, if the Governor is of the opposite faith, he will have some accounting; no question about that. Then you get a real proposition, and the State will win. Mr. Chairman, this is an important proposition. The details I assume will be taken care of paragraph by paragraph. I earnestly hope that the Chairman of this Committee — that the members of this Convention will seriously consider the one proposition to which I am now directing your attention in all of the seriousness and earnestness which comes from fifteen years of association and service in this Legislature. Fix the responsibility for initiation exclusively with one authority; fix the responsibility for the exercise of the veto with the other. Don't mix them.

Mr. Brackett — I was just about to assume the responsibility, in his absence, of my honored leader.

Mr. Wickersham — It would not be the first time, Senator.

Mr. Stimson — Mr. Chairman, it is the desire of the Committee to proceed in accordance with the will of the majority of the Committee of the Whole. There seems to be now no other speakers who have asked — or who have risen to be recognized. The Committee is ready to proceed, or ready to ask for an adjournment.

Mr. Wickersham — Why not move to vote on the measure?

Mr. Stimson — I think as long as we have debated this, and if there are no further speakers to be heard — I think time would be conserved by proceeding now to vote upon the measure. I have no desire to do anything in the direction of forcing the matter upon the Committee which the majority may be opposed to taking up at this time.

The Chairman — Is there any motion to be made on this?

Mr. A. E. Smith — Mr. Chairman, I rise to a question of information. Will we proceed section by section on this?

Mr. Stimson — I asked unanimous consent, and objection was made, so that now there is no other procedure, except to take up such amendments as may be necessary and to vote upon them. I understand that under the rule, the procedure now would be to

take up the amendments which have been offered and to vote upon them. Before doing that I should like to say a word in answer to the one or two questions that have been asked and one or two of the objections that have been made during the day.

Mr. Wagner — I want to have the Record clear. If I am in error I want to be corrected now. I understand that it is the right of any member in the Committee of the Whole to have the proposal before it considered section by section, and as a member of the Committee, I insist upon that right.

Mr. Stimson — There is but one section of the amendment, sir, and that means we must take up some time with the first, perhaps, and then continue,—

Mr. Wagner — There are sections one and twenty-one.

Mr. Stimson — There is section one of the article, that is to be taken up as a whole, first, and then that is to be followed by the amendment under section twenty-one.

The Chairman — The delegate from Saratoga, Mr. Brackett.

Mr. Brackett — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Brackett — The point of order is that under the rule it is time to adjourn and that the Committee rise.

Mr. Wickersham — Mr. Chairman, I move the Committee extend its session until half past eleven.

Mr. Brackett — Mr. Chairman, I raise the point of order that the rule cannot be suspended.

Mr. Wickersham — Mr. Chairman, I move that the Committee rise and report progress and ask leave to sit until half past eleven.

Mr. O'Brian — Mr. Chairman, as I understand it, this has not been fixed by rule, but by resolution of the House.

Mr. Wagner — Mr. Chairman, the Committee of the Whole has no power to change a resolution adopted by the Convention.

Mr. Brackett — Of course not.

Mr. O'Brian — Mr. Chairman, that is not what the distinguished gentleman from Saratoga said. He spoke about the Committee suspending the rule.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise, report progress and ask leave to at once resume its session.

Mr. Quigg — Mr. Chairman, I move to strike out the words "ask leave to at once resume its session".

The Chairman — The motion is that the Committee do now rise, report progress and ask leave to at once resume its session. There has been an amendment to that, to strike out the words "ask leave to at once resume its session". The vote is first upon the amendment. Those in favor of striking out the words "and

ask leave to at once resume its session " will signify by saying Aye, those opposed say No.

The Chairman — A rising vote has been called for. Those in favor of the motion to strike out will rise. The gentlemen will be seated. Those who are opposed to the amendment will rise. The gentlemen will be seated. The clerk will announce the result.

The Secretary — Ayes 65, Noes 67.

The Chairman — The motion is lost.

Mr. Wickersham — I think, in view of the vote, although the Noes did have it, there is an indication that a large number of the delegates do not wish to proceed further to-night, and I therefore move that we rise and report progress and ask leave to sit again.

Mr. Brackett — Sir, that saves me the trouble of making a speech until half past eleven.

The Chairman — The question is on the motion that the Committee of the Whole do now rise, report progress and ask leave to sit again. All those in favor of the motion will say Aye, contrary No. The motion is carried.

(The President resumed the Chair.)

The President — The Convention will come to order. The members will take their seats.

Mr. Marshall — The Committee of the Whole reports that it has considered General Order No. 46, Printed No. 778, and it desires to report progress and ask leave to sit again.

The President — The question is upon granting leave to sit again. All in favor will say Aye, contrary No. The Ayes have it and the leave is granted.

Mr. Schurman — May I make a suggestion in the interest of the comfort of the members of the Convention? We are now having long sessions, eight and nine hours a day, and I think every gentleman here must have noticed how bad and heavy the air in this room has been for the last two days. I do not know that there is any lawful manner of getting those upper windows open. If there is, I should like to see it acted on. The lower windows could be kept open during the intervals between the sessions of this Convention, and they might be opened at seven or eight o'clock in the morning. I take the liberty of suggesting, Mr. President, that you give instructions to the proper officers to do what can be done in that direction for the comfort of the members of the Convention.

The President — Mr. Schurman moves that the windows of

this Convention Chamber be opened at an early hour in the morning and be kept open until the session of the Convention. All in favor of that motion will say Aye, contrary No. The motion is carried.

The President — The hour of half past ten having arrived, pursuant to the resolution of the Convention, the Convention stands adjourned until ten o'clock to-morrow morning. Whereupon, at 11:00 P. M., the Convention adjourned to meet at 10:00 A. M., Wednesday, August 11, 1915.

WEDNESDAY, AUGUST 11, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Mr. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Oh Lord, God of Hosts, in whose hands are all the counsels and events of the earth, in this hour when difficult questions and perplexing problems are pressing for solution, we humbly appeal to Thee for guidance and for grace. Bless especially at this time, we beseech Thee, Thy servant, the President of the United States and all who take counsel with him. Endue them plenteously with the spirit of wisdom and understanding, of the fear of the Lord, and of courage, so that all their advices and all their actions may be along the line of Thy righteous will and may secure peace where now tumult reigns, and order where chaos abounds. We ask that Thou wilt purify the life of our nation so that we may be more worthy of Thy favor. Keep our hearts from all unworthy pride and our lips from all foolish boasting. Grant, oh Lord, that we may never go forth to battle as those who are desirous of earthly gain or worldly glory. May we never strike a blow in hatred or in love of strife; but, if fight we must, may we fight for the maintenance of justice and as helpers of the weak. Whatsoever burden Thou dost see fit to lay upon us as a nation, prepare us to bear it with patience and with courage, fearing no man or no power, seeking only righteousness and justice and peace for ourselves and for others. We commend to Thee the members of this Convention. Grant them patience and strength for the day's duties, and may all their deliberations and enactments work out for the higher welfare of our commonwealth. For Thy Name's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed?

Presentation of memorials. Petitions. Communications from the Governor and other State Officers. Motions and resolutions. The Secretary will call the roll of districts.

Mr. Mereness — Mr. President, by direction of the Committee on County, Town and Village Officers, I move to discharge the Committee of the Whole from further consideration of General Order No. 39, Print No. 57, by Mr. Kirby, entitled, Proposed Constitutional Amendment to amend Section 1, Article 10 of the Constitution.

The President — Mr. Mereness moves that the Committee of the Whole be discharged from further consideration of the bill, General Order No. 39, Print No. 57, and that the bill be recommitted to the Committee on County, Town and Village Officers. All in favor of the motion will say Aye, contrary No. It is agreed to.

Mr. R. B. Smith — I move that the Committee on Cities be discharged from further consideration of Proposed Amendment No. 774, that the same be amended as indicated, reprinted and recommitted.

The President — It is moved that the Committee on Cities be discharged from further consideration of Proposed Amendment, Print No. 774, Int. No. 254, and the Proposed Amendment be amended as indicated, reprinted and recommitted to said committee. All in favor say Aye, contrary No. The motion is agreed to.

Mr. Franchot — I move that the Committee on Cities be discharged from further consideration of Print No. 678, that the same be amended as indicated and reprinted and recommitted to that committee.

The President — All in favor of that resolution will say Aye, contrary No. The resolution is agreed to.

The President — Reports of standing committees.

Mr. J. L. O'Brien — The Committee on Rules submits the following report.

The Secretary — By Mr. O'Brien, from the Committee on Rules: The Committee on Rules recommends the adoption of the following special rule: That when consideration of General Order No. 46, the budget plan, is resumed in Committee of the Whole, debate on amendments shall be limited to one hour, no speaker to speak more than ten minutes; and that debate on the main question shall close at not later than 12 o'clock.

Mr. J. L. O'Brien — Mr. President, I move the adoption of the special rule.

The President — All in favor of the adoption of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. J. L. O'Brian—Although, perhaps out of order, so that the Convention may understand the procedure under this rule, I would like to make this statement. Under Rule 27, when the time limit, which is set by the special rule is reached, the amendments which have been proposed must then be voted upon in order without further debate. And I suggest, so that there may be no misunderstanding, that under the operation of this rule it is important that amendments which members desire to submit to a pending proposition should be submitted some time before the time limit is reached, because, once the time limit is reached, under the operation of this standing rule, there is difficulty about introducing new amendments. I simply call attention to that so we may all understand the procedure.

Mr. J. G. Saxe—I would like to ask the gentleman a question. I understand that under the special rule we have waived Rule 27 and that there is an hour for debate on amendments to-day. Is that correct?

Mr. J. L. O'Brian—That is correct.

Mr. Parsons—That would be the first hour?

Mr. J. L. O'Brian—That is the first hour.

The President—The Chair will say that that involves no waiver of Rule 27. It supplements Rule 27 and that rule is in operation at the close of action under this special rule.

Mr. Hinman—On behalf of the Committee on Future Amendments and Revision, I wish to submit the following two reports.

The Secretary—Mr. Hinman, from the Committee on Future Amendments and Revision, reports by bill entitled: "Proposed Constitutional Amendment, To amend Article XIV of the Constitution, in relation to future amendments and revisions of the Constitution, and permitting the validity of an election on a question submitted and the determination of the result of such an election to be contested by any elector in an action brought in the Supreme Court and by making provision with respect to questions coincidentally submitted by a convention and the Legislature."

Second reading: "To amend Article XIV of the Constitution, in relation to future amendments and revisions of the Constitution, and permitting the validity of an election on a question submitted and the determination of the result of such an election to be contested by any elector in an action brought in the Supreme Court and by making provision with respect to questions coincidentally submitted by a convention and the Legislature."

The President—Is there any special disposition to be proposed? Referred to the Committee of the Whole.

The Secretary—Mr. Hinman, from the Committee on Future

Amendments and Revision, to which was referred proposed amendment introduced by Mr. Marshall, No. 145, Int. No. 145, entitled: "Proposed Constitutional Amendment, To amend Article XV of the Constitution, with respect to the time when the Constitution is to go into effect." Reported in favor of the passage of the same without amendment.

The President — Is there any special motion to be made regarding the disposition of this proposed amendment. Referred to the Committee of the Whole.

Mr. Cullinan — The amendment reported by the Suffrage Committee and which had its first reading and was laid upon the table pending the report from the Committee on Future Amendments, I would move to go to the Committee of the Whole, together with the bill reported by Mr. Hinman on the same subject.

The President — The Secretary advises the Chair that that bill was subsequently referred to the Committee on Future Amendments, so that —

Mr. Cullinan — Well, then the same result is accomplished in the report of Mr. Hinman?

The President — Probably.

Mr. Rodenbeck — The Committee on Revision and Engrossment makes its first report this morning. We have reported four bills without any recommendation and three bills with minor changes. It seems to me perhaps appropriate in connection with this first report to say a word or two about the powers of this Committee. They are defined in Rule 17 which provides that "the Committee shall examine and correct the constitutional amendments which are referred to it for the purpose of avoiding inaccuracies, repetitions and inconsistencies." These words are rather broad in their treatment. They may be given a very broad construction but the Committee does not regard them as embracing any changes adopted by the Committee of the Whole which go to the substance of the amendment. Where a change is necessary, and such changes will be necessary later on, as the amendments accumulate, to avoid an inaccuracy, repetition or inconsistency, the Committee will call attention to the change and submit it to the Convention for such action as it sees fit to make. The Committee will not undertake to make any changes in the proposed amendments as adopted without such a report. We wish the Convention to understand that the Committee will not report any change, even though it may be regarded as a minor change in a proposed amendment, without a report of the change. Changes in punctuation in new matter will be reported, but the Committee will not change the punctuation in any portion of the existing Constitution on account of the possible construction and

interpretation of the language in its present forms. The commas recommended for omission in the reports submitted this morning, the Committee regard as wholly unnecessary to the sense. Where there is a doubt as to the necessity for a comma or other punctuation to make clear the meaning the punctuation will be preserved, but all useless punctuation will be stricken out and recommended for omission to the Convention. By going over the amendments carefully at this time the Committee feels that the time of the Convention will be saved later on when it becomes necessary to report the Constitution as a whole in final form with all the amendments inserted in their proper place. I send to the desk these reports.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment to which was referred Proposed Constitutional Amendment introduced by Mr. Austin, Print No. 746, Int. No. 78, and entitled: Proposed Constitutional Amendment, To amend Section 15 of Article III of the Constitution relative to passage of bills by the Legislature by striking out the authorization for the passage of bills under emergency messages from the Governor; also Proposed Constitutional Amendment by Mr. Latson, Print No. 761, Int. No. 531, entitled: "Proposed Constitutional Amendment, To amend Section 4 of Article XI of the Constitution in relation to the appointment of military officers by the Governor;" also Proposed Constitutional Amendment introduced by Mr. Latson, Print No. 794, Int. No. 534, entitled: Proposed Constitutional Amendment, To amend Section 5 of Article XI of the Constitution in relation to the manner of election of military officers prescribed by the Legislature." Also, Proposed Constitutional Amendment introduced by Mr. Latson, No. 764, Int. No. 535; also Proposed Constitutional Amendment, To amend Section 6 of Article XI of the Constitution in relation to the removal of commissioned officers for absence without leave; reports the same as examined, as correct and correctly engrossed.

Mr. Wagner — Mr. President, on a question of information, I would like to inquire whether this disposes of all of the bills which have been advanced by the Committee of the Whole to the order of third reading.

The President — The Secretary informs us that there are further reports which have been handed up by the Committee.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment No. 749, Int. No. 698, introduced by the Committee on Education, entitled: "Proposed Constitutional Amendment, To amend Section 1 of Article 9 of the Constitution, in relation to the supervision and control by the State of the

education of children," reports the same with the following recommendation: Page 1, line 6, strike out the word "thereof", and insert in the place thereof the words "of the State".

The President — The Committee recommends a change in the wording of the bill, and it appears that the proper course is to put the question to the Convention on the disposition of the report of the Committee, before the bill is printed for third reading.

Mr. Wickersham — Would not that involve the approval of the proposed change, and should we not have, should not the Committee have an opportunity to give their approval before agreeing to the change?

Mr. Quigg — Dr. Schurman is not here.

Mr. Wickersham — Sometimes a change of a word might to the author of a bill make a decided difference in the meaning, and my suggestion is that the report lie over for twenty-four hours to enable those interested in it to examine the report of the Committee on Engrossment.

The President — Will the gentleman accompany that by the motion that the bill be printed as reported?

Mr. Wickersham — I move that the bill be printed as reported by the Committee on Revision and Engrossment and that the call of the order of business of the measure for third reading be postponed for the day.

The President — It is moved that the Proposed Amendment to the Constitution reported by the Committee on Revision and Engrossment, that it be printed as reported and that the order of third reading be dispensed with for the day. All in favor of the motion will say Aye, contrary No. Motion is agreed to. The report will lie upon the President's desk. The Secretary will proceed with the reading of the reports from the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment No. 793, Int. No. 707, introduced by the Committee on Relations to Indians, entitled: "Proposed Constitutional Amendment, To amend Section 15 of Article I of the Constitution of the State of New York, in relation to Indians," reports the same with the following recommendation: Page 2, line 5, strike out the comma after the word "State".

Mr. Wickersham — I make the same motion as to that.

The President — Is there any objection to the same disposition of the report? There being no objection, the same order will be made.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment No. 775, Int. No. 291, introduced by Mr. R. B. Smith, entitled: "Proposed Constitutional Amendment, To amend Article III, Section 4 of Article IV of the Constitution, in relation to voluntary sessions of the Legislature and the Assembly, reports the same with the following recommendations: Page 1, line 4, after the word "may", strike out the comma and insert a comma after the word "motion", in the same line. Page 1, line 7, after the word "may", strike out the comma and insert a comma after the word "motion", in the same line. Page 1, line 9, strike out the comma after the word "section". Page 2, line 7, strike out the comma after the word "Senate".

Mr. Wickersham — I make the same motion, Mr. President.

The President — Without objection, the same disposition will be made.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment No. 747, Int. No. 289, introduced by Mr. R. B. Smith, entitled: "Proposed Constitutional Amendment, To amend Section 28 of Article III of the Constitution, in relation to the granting or allowing of extra compensation by legislative bodies, or auditing boards, bodies or officers," reports the same with the following recommendation: In line 8, after the word "officers" strike out the comma.

Mr. Wickersham — I make the same motion, Mr. President.

The President — Without objection, the same disposition. Are there any further reports of standing committees?

Mr. S. K. Phillips — The Committee on Contingent Expenses makes the following report, and I move the adoption of the resolution contained therein:

By Mr. S. K. Phillips, The Committee on Contingent Expenses reports back the communication addressed by the Legislative Index Publishing Company to Honorable Elihu Root, President of the Convention, on the subject of furnishing an Index and record containing, first, amendments adopted by the Constitution; second, amendments advanced to third reading; third, amendments favorably reported and in General Orders; fourth, amendments adversely reported and pending in Convention; fifth, amendments favorably reported and rejected by the Convention; sixth, continuation of index of the Record relating to the five classes of proposed amendments above enumerated, and a bound complete copy at the close of the session for the use of the delegates and certain officers on the mailing list to be designated by the President, with the recommendation that the following resolution be adopted: Resolved, That the Secretary contract with the Legislative Index

Publishing Company for 1,350 copies of the Constitutional Convention Index above referred to at an aggregate cost of \$4,355.

The President — Is the Convention ready for the question upon this resolution? All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. Any further reports of standing committees.

Reports of select committees. Unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole for the consideration of the unfinished special order reported by the Committee on State Finance, No. 46. Mr. Marshall will resume the Chair. (Mr. Marshall resumes the Chair.)

The Chairman — Under the rule reported by the Committee on Rules this morning, amendments will now be in order to the measure which we are considering and debate will be allowed for one hour. At the close of the hour there will be general debate and voting on the article as amended will take place at 12 o'clock.

Mr. Stimson — Mr. Chairman, on behalf of the Committee on State Finances, I offer several amendments to the bill before the House, No. 778, and I wish to say that I will explain these amendments after the other amendments which may be offered by other members have been submitted, sometime hereafter.

The Secretary — By Mr. Stimson: Page 1, line 9, after the word "department" insert the words "including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the Legislature." Page 2, line 15, after "surplus" insert "or deficit". Page 3, line 5, after "duty" strike out the comma. Page 4, line 6, strike out "within" and insert in place thereof "not later than". Page 4, line 7, strike out "next".

Mr. R. B. Smith — Mr. Chairman, I offer the following amendments.

The Secretary — By Mr. R. B. Smith — On page 3, line 4, after the word "governor" strike out the comma and insert the word "and". Page 3, lines 4 and 5, strike out the words "and the comptroller". Page 3, lines 5 and 6, strike out "and it shall be their duty, when requested by either House of the Legislature,". Page 3, strike out lines 17 to 21, inclusive, and to and including the word "four" in line 22. On page 4, line 6, strike out the word "within" and insert the following: "Prior to the expiration of". On page 4, line 7, strike out the word "next".

Mr. Quigg — I offer the following amendment.

The Chairman — The Secretary will read Mr. Quigg's amendment.

The Secretary — By Mr. Quigg: Page 3, lines 4, 5, 6, 7, 8 and 9, to and including the word "law", and insert as follows:

"The Governor, in his discretion, may appear and be heard in either house of the Legislature in respect to the budget during consideration thereof, and it shall be the duty of the heads of the departments and the Comptroller, when so required by either house, to appear and to furnish information and answer inquiries relative thereto."

The Chairman — Mr. Cobb's amendment will now be read.

The Secretary — By Mr. Cobb: Page 2, line 24, after the word "comparison" insert the words "together with all reports, opinions, evidence, and estimates which the Governor shall have received relative to the preparation of the budget."

The Chairman — Are there any other amendments?

Mr. Brackett — I offer the following.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Brackett: Page 1, on lines 7, 10 and 11, each, strike out the word "Governor" and insert instead thereof the word "Comptroller". Page 3, line 9, strike out all after the word "law", all of lines 10 and 11, and in line 12 to and including the word "judiciary".

Mr. A. E. Smith — I offer the following:

The Chairman — The Secretary will read the amendments.

The Secretary — By Mr. A. E. Smith: On page 4, line 5, after the word "management", add the words "nor any obligation incurred". On page 4, add the following: On page 4, between the lines 2 and 3, insert the following: "Section 20 of Article III of the Constitution is hereby amended to read as follows: 'Section 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating public moneys or property for local or private purposes, or for a State purpose, when less than the whole State is to be directly or mainly benefited by the expenditure of the moneys appropriated, except appropriations for the repair and maintenance of the canals, or the support or construction of State institutions.'"

Mr. A. E. Smith — Mr. Chairman, I would like to say that belongs at the top of page 4. I notice that lines 1 and 2 of page 4 contain the wording of the amendment to section 21. It therefore belongs at the top of the page, and it should come in between the new section when this is one of the new articles, between that and section 21 of the present Constitution.

Mr. Wagner — I offer the following amendment. It is in memorandum form at the present, but I will send it up in proper form later on.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Wagner: Page 3, line 6, after the

word "by" insert the words "at least one-third of the elected members of".

Mr. J. G. Saxe — Mr. Chairman, do I understand there are no further amendments?

The Chairman — I was about to ask that question. Are there any further amendments to be proposed? This has now occupied about half an hour of our time.

Mr. Rodenbeck — I offer the following.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Rodenbeck: Page 2, line 12, strike out the word "or" and insert in the place thereof the words "and so".

Mr. Wadsworth — I offer the following amendment.

The Chairman — An amendment is offered by Mr. Wadsworth.

Mr. Wadsworth — I want to say that it is the same amendment that is offered by Mr. Ray Smith, but I would like to go on record in this way as favoring it.

The Chairman — I understand that the proposed amendment — the amendment proposed by Mr. Wadsworth is precisely the same as that by Mr. R. B. Smith.

Mr. Wadsworth — Not all of them; it includes one of them.

The Secretary — By Mr. Wadsworth: On page 3, strike out all after line 16, down to and including the word "four" in line 22.

The Chairman — There being no further amendments offered, Mr. Saxe has the floor.

Mr. J. G. Saxe — Mr. Chairman, I am so much in favor of this proposed amendment in general and in virtually all its details that I would prefer not to be one of those who are offering amendments. The only reason that I offer this amendment is because I regard it as of importance equal to the budget plan itself. Let me state what my amendment is. In its proposed amendment, the Committee not only suggests that the Governor, the Comptroller and the heads of departments may appear before the Legislature to answer inquiries, but it provides that the Governor, the heads of departments and the Comptroller must appear when so requested and must answer inquiries. I have no objection to the provision so far as it relates in a mandatory way to the Comptroller and heads of departments, but I claim that we will be making a serious mistake if we so confound the functions of the executive and the Legislature that the Legislature may require the Governor to appear before it for cross-examination. Now, as to the frame work of my amendment, I understand that Mr. Quigg has proposed one covering the same thought and I think if I correctly caught the amendment of Mr. R. B. Smith, it covered the same

thought. I don't know which one I prefer; but I say this, that mine adopts the Committee's language as closely as I can adopt it, with the single exception that I take out the provisions as to the Governor being obliged to attend. He may in his discretion attend and have his conferences with the Legislature, but he cannot be required to do so. Think what it would mean, how far it might go. It might include cross-examination as to the Governor's knowledge of State finances. It would also permit a fishing excursion, if there were any differences of political complexion. Again, the greater includes the less, and it might go so far as to be an inquiry as to the executive documents or papers. During the last year, I have had personal experience — have had to protect the executive department even against the demands of the judiciary. And in addition to that I want to say to the chairman of the Finance Committee that he, as a member of his law firm, knows better than anyone else how far that legislative power of heckling may go and to what insulting lengths it may reach. I recollect in my earliest days in the Legislature an occasion when there was an utterly unworthy exhibition of heckling by a joint committee of both houses — the Judiciary — when Mr. Stimson's senior partner and a justice of the Supreme Court appeared, and when the whole community was aroused because of the treatment they received. This has made itself felt four years afterwards in the Judiciary Committee of this body, in respect to an amendment relating to the magistrates of New York city.

Now, I might argue for a long time along these lines and quote to this Convention decision after decision of the United States Supreme Court and of the highest court of this State, but I desire to give but one and then I shall be seated. I shall quote from a decision of one of the greatest jurists in this State, Hon. Nathan L. Miller, written in respect to a different provision, but relating to inquiries between two branches of government. Justice Miller in that case said: "It is impossible to foresee all the evils likely to result from the indulgence of that tendency, or to what it might lead, and it is certain that it has not been indulged in this State by the framers of its successive Constitutions, which have all carefully preserved the great principle of the independence of the three branches of government. The present State Constitution, like all of its predecessors, carefully separates, defines and limits the powers of each branch. 'The legislative power of this State shall be vested in the Senate and Assembly.' (State Const. Art. 3, § 1.) 'The executive power shall be vested in a Governor,' etc. (Id. Art. 4, § 1.) 'The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or

may be prescribed by law not inconsistent with this article.' (Id. Art. 6, § 1.) Each within its sphere was intended to be independent of the others. It is indispensable to our scheme of government."

Perchance, Mr. Chairman, if it was absolutely essential to this budget scheme that it should be provided that the Governor might be dragged before the Legislature by the scruff of his neck, I might withdraw my objections because I am so deeply in sympathy with the budget scheme, but it is not necessary. It is not expedient, and I rest my amendment upon the opinion of Mr. Justice Miller.

Mr. Weed — I am most heartily in favor of the present scheme and will most heartily support it, but I am as earnestly in favor of the amendments which have been proposed by Mr. Saxe and several other gentlemen for the purpose of preserving the dignity of the great office of the Governor of the State of New York. It is well enough to make him appear before the Legislature for the purpose of making such explanation as he may desire, but that he should be brought there by compulsory process, I confess, outrages all my sense of propriety in regard to the respect that should be paid to that distinguished office. It has been said here that we can count upon the members of the Legislature treating the Governor with consideration, and I can well imagine that the members here who have been living in this atmosphere of courtesy for three months could scarcely believe that the Governor of this State could be subjected to anything that would indicate a lack of respect for his office. But, sir, within the very recent past we have seen how legislators sitting upon examination commissions have abused this privilege; and while they have possibly put relevant questions, they put them in such a manner that the implication is an abuse and an insult. And, sir, I think it is due to us that we should protect the office of the Governor from any such possible insult. Now we say that we can count upon the consideration of the members for the position, but, sir, we can well imagine that some reckless member of the minority, for the purpose of obtaining notoriety, for the purpose of seeing his name in magnified headlines in the sensational press, would make use of this opportunity for the purpose of having this press some day appear in great leaders "Assemblyman So and So Attacks the Governor," and have his name spread over the country and give him notoriety, however improper, on his part that might be. Now, sir, the next proposition as contained in this proposal is that the questions shall be relevant. Who is to test their relevancy? Is it to be tested by the Legislature, or is it to be tested by the Governor? We can well imagine, where there is an adverse

majority, that the Legislature would be prone to determine that it had the right to determine the relevancy and there would be another opportunity for a wrangle between this great official, this representative of the entire people, and one or two members of the Legislature. Now, Mr. Chairman, there is also no limit placed upon the frequency with which these questions may be put and I think these gentlemen who have had charge of this matter, in their interest in the budget, have come to imagine that there is nothing so important in the duties of the Governor as the preparation of the budget and the answering of inquiries in regard to it. But, sir, he has a vast variety and extent of duties to perform and I do not think that his time ought to be trespassed upon by the possibility of his being brought continually before them to answer such questions as might be put. And there is another suggestion. It has been said that the premier of England is called upon to answer questions in relation to the budget, but the example is far stretched and I think has little force in the consideration of the question. The premier is the leader of the party. He is not the head of the government, but the Governor of the State of New York, as soon as he takes his oath of office, becomes the representative of, not a party, but of all the people, and in everything that he may propose in the way of a budget he has undoubtedly got to justify himself before the people as a whole, and I do not think that he should be called upon to justify himself before any portion of either of the Houses of the Legislature.

Now, Mr. Chairman, it seems to me also that the procedure provided here is useless. If the members of the Legislature desire information upon any measures, they can get it by calling upon the heads of the departments to furnish it. I cannot imagine that any occasion would arise where the Governor would be called upon unless he is called upon for the purpose of indulging in some debate upon the measures which he proposes.

Mr. Chairman, I hope for the honor of our State that we will preserve the dignity of this position and that we will prevent the possibility of any insult either being thrown at or cast upon the Governor of the State of New York.

Mr. Quigg — The language used by the Committee on this subject that we are now debating concerning the Governor, it seems to me, is quite absurd. "The Governor, the heads of departments and the Comptroller, shall have the right", now, leave out the expression "and it shall be their duty", "shall have the right when requested by either House of the Legislature to appear and be heard". Well, I would have that right if I was requested. Anybody would. No use putting that in anyhow. Now, it says, "It shall be their duty". That is what I want to correct. "Shall

have the right" are clearly absurd words to put into the Constitution. My amendment will say that "the Governor in his discretion may appear and be heard in either House of the Legislature in respect to the budget during the consideration thereof", "and it will be the duties of the heads of departments",—not the Governor, I leave him out. It seems to me that it is outrageous to subject a Governor to the call of the Legislature. "And the Comptroller when so required by either House to appear and to furnish information and answer inquiries relative thereto",—"relative thereto", Mr. Weed. I strike out the word "relevant" and I say "relative thereto", because I agree with Mr. Weed, who is going to say whether it be relevant or not, the Governor or the Legislature. If you leave it that way, then you are going to have impeachment proceedings and so forth. It is all absurd.

Mr. Byrne — I agree with Mr. Quigg. I do not think it is an outrage but I think it is unbecoming that the Governor should be brought before the Legislature. I agree with that, but when you are beginning to do something that has never been done in the United States before, when you are going to put into the hands of the Governor something that is not in the hands of any Governor of the United States, desperate needs require desperate remedies. If you are going to give him that power, then perhaps his dignity will have to suffer a little, to permit the minority, who are a check, to question the gentleman who is going to initiate this budget. He may be questioned, says Mr. Saxe, as to his financial knowledge. In the name of goodness, why shouldn't he be questioned upon it, if he is going to initiate a budget. I do not want to say anything more upon this subject.

Mr. Parsons — I hope this amendment which provides for the striking out of the requirement that the Governor shall appear, will not prevail. Carrying out what Mr. Byrne has said, we are now trying to put the Legislature in the place where its authority belongs, of enforcing economy on the administrative and executive departments in the expenditure of money. We should, therefore, facilitate it in every way, not only in getting the information, but in forcing the executive to comply, not only in word, but in spirit, with the provision which we have inserted here. Now, he is going to be protected against any abuse. In the first place the procedure for such an appearance and inquiries shall be provided by law. The law will have to be worked out. It will have to go to the Governor for approval and we must assume that it will provide for reasonably protecting him and the heads of the departments. Now, why should the Governor be brought on to the floor of the Legislature? It is for this reason. When the Governor makes a statement it is printed in every newspaper in the State,

but when a legislator makes a statement that rarely happens; and unless you bring the Governor onto the floor of the Legislature to answer, man to man, not from the stump, the questions which the Legislature puts, you give him an unfair advantage. We have had instances where Governors have increased their popularity at the expense of the Legislature; where Presidents have driven men from public life by a word. There is in legislative bodies a man to man feeling, a greater intellectual honesty, than there is in talking from the stump. There will be things which Governors will not dare say on the floor of the Legislature which they would easily say to the newspapers or in public audiences, where they could not be called to account for what they said. Now, we intend here to provide an efficient method, an accurate method to bring people down to facts, not oratory, and if we are going to do that then, with the power which we give the Governor, we should also submit him, in dignity, because I believe the law will provide for that, and the Legislature will protect him and submit him to questions and answers.

Mr. Wickersham — Mr. Chairman, I ask that the privileges of the floor be extended to Dr. Andrew D. White, who is here, and who is one of our most eminent citizens, and I believe it will give great pleasure to the Convention to join in that courtesy.

The Chairman — You have heard the motion. Those who are in favor of extending the privileges of the floor to Dr. Andrew D. White, one of the most eminent sons of the great State and one of the greatest Americans, say Aye. The privileges of the floor are extended.

Mr. Wagner — There is very little that can be added to what Mr. Parsons says about inserting the provision requiring the Governor to appear upon the request of the Legislature to justify the appropriations which he seeks. I am not at all in sympathy with such arguments as were presented, for instance, by Mr. Saxe and Mr. Weed, that we must legislate here in our fundamental law upon the theory that our legislative bodies are composed of rowdies; that the Governor will be subject to insult if he is asked to come before that body to justify any legislative request which he may make. I should prefer to think that it would be more in keeping with propriety to act upon the theory that our legislative bodies, like this Convention, will be composed of gentlemen, and if, occasionally, a rowdy does assert himself, he will readily be suppressed by those of gentlemanly instinct. So that I hope that that suggestion will receive but very scant sympathy in this body. He then proceeds to say I am asserting this because I believe in the independence of the three branches of government, and then adds by saying "But I am heartily",— so as to be sure the news-

papers will not misunderstand,—“ I am heartily for this budget proposition here advanced”. Why, that is an invasion of the independence of three branches of government. We are now for the first time, as Mr. Byrne said, in the history of our country, and we are the first State in the Union taking a new step in the method of appropriations, because now in every State in this Union and in our Federal government appropriations are initiated by the Legislature, and here we are making a new departure in our system of government, and now we permit an executive, one individual, to initiate appropriations for the Empire State. Now, in return for this invasion of independence and this new extraordinary power we are conferring upon him, we should make certain restrictive provisions and one of them is that with that power goes a responsibility, and as Mr. Parsons has said, not to go out onto the stump and say the Legislature has done this or that, or has reduced this appropriation for this great reform but that he may face the men whom he criticises, so that he may be asked such questions as they may propose either in a critical spirit or in a desire to seek information. Now, I arose to address myself to the amendment which I proposed, that one-third of the members of either House may require the attendance of the Governor. For, if that proposal is not included here, the whole provision is a mere nullity and will be nothing but window-dressing, for when the majority of the Legislature is in sympathy politically with the Governor there will be no time when he can be invited except upon a friendly relationship, and in order to perhaps make a political speech in favor of some budget provision which he seeks; but in order that criticisms may be effective, the minority must have some rights, and must have the permission to examine the Governor upon the items which they seek to criticise. President Lowell of Harvard, when he was before us, stated that the provision in Parliament when the minority party cross-examines the ministers who seek appropriations is one of the healthiest things in the British government and has tended more toward economy than anything else. This very thing which we are proposing here, that those seeking appropriations must come before the legislative body and stand cross-examination by those who are criticising the appropriations, now unless this one-third provision is put in here this provision will not accomplish the thing you seek to accomplish. In answer to Mr. Weed, when he says that the Governor when elected is no more a leader of his party, that he at once forgets his affiliations and becomes the Governor of all the people of the State, let me say there is not necessarily any inconsistency there. He may be an efficient Governor of all the people and also a successful leader of his party, and as authority for that I would

call attention to the speeches of Governor Hughes in the campaign for direct primaries, who insisted that he, as Governor, was the leader of his party; and the great President who now graces the executive chair at Washington has stated over and over again that as the head of the National government he is also leader of his party — so that Mr. Weed's suggestion that the moment an individual becomes Governor he loses his political affiliations is not in accordance with precedent. And let me say that I am in favor of the budget; let me reiterate for the benefit of the gentlemen listening to us in the benches in front of us, I am heartily in favor of a budget, I am heartily in favor of a scientific budget. I stated yesterday that this is an improvement to some extent upon our present system. But if you really want to make a provision that the Governor may come before the legislative body and justify his appropriations, and make it effective and not a nullity you must have the one-third provision in the fundamental law.

Mr. Olcott — I rose, hoping to be recognized before Mr. Quigg left the Chamber, to call his attention to the fact that the Committee's proposition to strike out the comma after the word "duty" entirely cures his criticism as to the apparently bad language of the phrase. And then when I heard my friend and housemate, Mr. J. G. Saxe, propose and argue for his amendment, I found myself in a good deal of agreement with him. On analysis, it seems to me that perhaps my feeling in that regard is more one with regard to cherished dignity of the Governor, that the Governor should not be ordered by the Legislature to come before it any more than that the Legislature should be prorogued by the Governor; that there should be complete independence at every moment as well as in the scheme of government, between the three branches of government, and I am bound to say that it seems to me that idea should prevail in regard to the Saxe amendment, and that it should be adopted. If I am right,— and it seems to me that I am — that no very necessitous requirement is present for the attendance of the Governor. If the Governor has in reality personally made up his budget, he is going to go there quick enough without any subpoena, because he is going to know enough about the subject to desire its demonstration by himself, and if, as I suppose will very often be the case, the Governor has not personally done it, but has used these experts in the Comptroller's office and the heads of the departments to help him with the budget, they are the ones, the only ones that can clarify the situation and give answers that will be illuminative to the Legislature. So that it seems to me that you have in any event the people who can help the Legislature determine whether the budget should be amended or parts of it stricken out, or parts unamended. But on that subject, while my vote will be with Mr. Saxe, I am frank to say,

and therefore it is of little interest to this body, that I think there are two sides to the question. It seems to me, with regard to the Wagner proposal that one-third of either house of the Legislature shall compel the attendance of any of the officials to answer questions for the illumination of the legislative mind and that of the public, that there can not be any question why my friends and even members of the Committee, with all your predisposition,—Mr. Nicoll and the rest, Mr. Stanchfield, as well as the Chairman — with all your predisposition to pass this thing unamended except as your Committee shall propose amendments, I ask you how the proposition for the examination of this budget by the cross-examination of the persons who have composed it can possibly be of any use in the world unless you give a minority of the Legislature the power to call in those officials and to compel their attendance for cross-examination? Why, it is not a party measure. It is not a measure where the Committee should have any pride of position on the subject, nor do I accuse them of such a thing, but I know how hard it is for an outsider to their deliberations — and I was not, you know, a member of the Finance Committee — to get into their minds on subjects which they have already, through their great deal better opportunities, thought they had concluded most wisely. And yet I do ask them whether anything was ever yet gained as to clarification of a great and involved scheme by questions which emanated only from the ranks of that scheme's friends? Was there ever anything lost, on the other hand, if the proposition is worthy of consideration, by cross-examination at the hands of the enemies of the scheme or the critics of the scheme? If the scheme is good, does it become anything but better after the most unfriendly criticism? If you are trying a case, you lawyers in the Convention, is there anything that you want done to your star witness, whom you know you can rely upon because you know he is telling the truth — is there anything, I say, that you want done that is more certain to help your case than to have John Stanchfield or Delancey Nicoll or some equally able lawyer cross-examine him. Because, if he can beat them, why, he can beat the argument. And so I say, if your budget is good, is there anything that you should more want than that the unfriendly one-third of the Legislature should cross-examine its proponents and its author? I do trust that we shall have approval of this proposition. It has come to me anew, it has come to me from a man whom I am politically taught to look out for, whose combination of wickedness and brilliancy is going to lead me astray, and yet, submitting it to the tests of care and analysis, I do not believe there ought to be any considerable number of this Convention who will deny to Senator Wagner what he wants, an examination of the authors of the budget by the opposition party.

Mr. D. Nicoll — After the very beautiful bouquet just handed to me by Judge Olcott, it is rather invidious on my part to disagree with him. But it seems to me that the safest course to pursue, and really the only necessary thing to do, is to leave to the Legislature as an entire body the right of requesting the Governor to appear before it. I feel that it would be going too far, if, in the Constitution, you confided the exercise of so important a power to the minority of the body. To my mind, it is not proper Constitution-making and I believe that the end sought to be accomplished can be obtained by trusting it to the body as a whole. Now, really, last night I said about all I want to say upon the question of the propriety of examining the Governor, in any event, before the Legislature, for the purpose of interrogating him with respect to the compilation or the details of the budget. Of course, it is a new feature in our Constitution, but it is not a new feature in government. It is the commonest kind of a thing in our democracies. Nor is it a departure or a mingling, a commingling, of the functions of government because, as I pointed out last night, a fact which seems to have been overlooked by many of the speakers this morning, the Governor himself is a part of the legislative part of the government as well as the executive. You cannot make laws without the Governor. He is a part of the law-making power, and therefore we are not now, as has been suggested to me by some one of the critics of the measure this morning, making any innovation by undertaking to commingle the different functions of government. Now all of these objections to the proposal with respect to the Governor are based upon the expectation that future Legislatures are going to be composed of schoolboys or toughs or lunatics, and I do not think we can build a Constitution upon any such predicate. I am going to assume that future Legislatures are going to be composed of patriots and gentlemen and that they will treat the opportunities given to them by the Constitution in the way that patriots and gentlemen usually do. I think also that the tendency of the times is toward bringing the executive and the legislative departments of government closer together. At the present time the distinguished President of the United States does not consider it beneath his dignity to appear before the Congress of the United States and deliver his messages, although that was a much greater innovation in government than anything here suggested. And I think you will agree with me that a former President of the United States, now sadly estranged from the majority in this Convention, would not have hesitated and would have been glad of the opportunity to appear before the committees of Congress for the purpose of justifying his acts. So I sincerely hope that these amendments will not prevail.

Mr. Bernstein — I am in favor of the budget for the administration of our affairs in this State, and I am in favor of this particular budget proposal as the best budget proposal that has been submitted to this Convention. There have been suggestions made on the floor in the shape of amendments which I believe will strengthen the proposal of the Finance Committee. One of those is the amendment by Mr. A. E. Smith, that it shall require a two-thirds vote to pass all appropriation bills. I think that it would safeguard the State and the finances of the State from the kind of legislation that Mr. Smith testified to in detail on the floor here last night. Now, with regard to the proposal for the quizzing, as it has been called, of the Governor and the State officers. I cannot see any of the dangers that have been pointed out here in this proposal. Mr. Weed referred to the fact that the Prime Minister in England and the high cabinet officers in England and in other countries of Europe are in the habit of being quizzed upon questions that arise in their different Legislatures and he said that they occupy a different position from the position of the Governor of our State. I venture to say, with all due respect, that he is mistaken. They occupy the same position that the Governor and the administrative officers of this State do here. They are the executive, the administrative officers of the particular country or the particular government that they represent. It is not considered an indignity to quiz the Prime Minister of England, the highest official of the government of England; it is not considered an indignity to quiz the Prime Minister of France or the Chancellor of Germany. These men consider that they are simply public servants, as our Governor is here. It is surprising to me to hear these gentlemen who are most loud in their criticisms of the men who are attempting to dignify the office of Governor by giving him appointive powers, these men who are jealous of the powers and of the rights of the Legislature whenever any occasion arises in this Convention when any attempt is made to abridge the powers and the functions of the Legislature; it is surprising to me I say that these men now raise the point that it would put an indignity upon the Governor of the State of New York.

Mr. Brackett — Is the gentleman still so old-fashioned and foolish as to think that if this amendment passes that the Governor is going to be the "servant?"

Mr. Bernstein — I surely do. The Governor of the State of New York is as representative of the people as the Legislature of the State of New York. He represents the people in a larger unit than the respective members of the Legislature. He is not only in theory but in practice the servant of the people, and if we are to have business methods in the administration of our

affairs it is only right that the Governor, the servant of the people, one of the cogs in the wheel of our government, should be brought here and questioned in regard to the advice that he is offering to the Legislature as to this budget. Now, Mr. Chairman, it seems to me that if we should have that provision in our Constitution, Mr. Wagner's amendment becomes an absolute necessity. You are going to make this provision of the section an absolute nullity if you do not include that, because as Judge Olcott pointed out, the vote of either house of the Legislature simply means the vote of the majority, and if the majority for some reason, because it happens to be in sympathy with the Governor that is, or because it has plans on financial government of its own, will refuse to call the Governor to question him, you are going to nullify the salutary provisions of this law. I submit therefore that this amendment of Mr. Wagner's should prevail in order to make the proposal of the Committee, with which I am in hearty accord, a workable budget arrangement.

Mr. Ostrander — Mr. Chairman, I am sincerely glad that there are so many ways of salvation. For the last thirty years I have heard Governors and members of the Legislature coming up here to stop the expenses and save the people, save the government. A year or two ago they were going to be saved by this direct primary. If we go back we find the wrecks of salvation all along the road for thirty years. It is strange to me that it never has occurred yet to anyone that the way to save our people from excessive taxation is to stop spending money. That is kind of old-fashioned, and perhaps foolish, but that is about the only way, because as the old gentleman told his son about the horse race, it is the last quarter that they pay off on. You may have all the ways and means of disposing the Governor and the other officers but the place to judge of the final result will be on what is passed, what you have got to pay. Now anyone would think that there had never been any looking ahead to find out what has got to be passed here, but all these years we have struggled along fairly well without a budget, and if anybody pins his whole faith to his budget I would ask him to take a glimpse along down the river to our city of New York, which is so much in evidence, and has a large, ample and fine-looking budget. A few years ago about the time of Mayor McClellan, there was a debt of about three hundred millions or thereabouts. They have had a budget in full operation ever since and now they only owe about twelve hundred million, and the man who can devise some way to increase the debt limit down there is a national hero. Now while this makes a nice proposition to talk about, when we get down to the real final analysis of it the men who come into the Legislature and the

Governor are always going to get their heads together and spend a little bit more money than they did the year before; and don't fool yourselves for a minute in thinking that the old man up and down the State and all over the country is not onto us. You may butter his parsnips with as many fine words as you please, but the man at home knows it is mostly all talk and mostly all poppycock. When a few men come together from the Legislature and from the different departments and find out what has got to be spent, and how much they can afford to give their several friends, and agree on it, that is about as near as you will ever get.

Mr. J. L. O'Brian — I desire to call the attention of the House to the fact that under the special rule adopted this morning the debate on amendments was limited to one hour and the debate on the main question was to close at 12 o'clock. It is now quarter to twelve and it is quite apparent that there is not time left under that special rule for adequate discussion of the amendments and there certainly should be some time allowed for the discussion of the main question, for I assume that the chairman of the Committee may desire to speak, and inasmuch as the time will lapse at 12 o'clock, I respectfully move, subject to the approval of the House —

Mr. Stimson — The Chairman does not require more than ten minutes.

Mr. J. L. O'Brian — The chairman of the Committee will desire ten minutes and I assume the proponents of the amendments are still to be heard from, and I therefore move, Mr. Chairman, that the Committee now arise, report progress to the Convention and ask leave to sit until 1 o'clock with a proviso that the vote on the main question shall then be taken. I make that motion.

Mr. A. E. Smith — Mr. Chairman, I would like to ask the gentleman from Buffalo not to pin us down to any particular time. Now in the history of the last Convention and in this Convention considerably more than two days have been given to questions of a great deal less importance than this one. I don't know what there is to be discussed in this Convention after this question has been disposed of that is nearly as important as this, and two days would not be too much. I want to call attention to the fact that it has taken an hour and a quarter to discuss only one of the proposed amendments, and I think the Convention will agree with me that it is probably the one of least importance. Now it does not seem reasonable to pin us down to 1 o'clock.

Mr. J. L. O'Brian — Mr. Chairman, I appreciate the compliment of the gentleman's attributing power to me in this matter, but I call his attention to the fact that this is entirely in the hands

of the Convention and that my motion is simply to take the matter back to the Convention so that we shall not get ourselves into a snarl. I, like the gentleman who has just spoken, think that the matter should be fully discussed and I will modify my motion to read that the Committee do now arise, report progress and ask leave to sit again. When that motion is put we may debate the question of how long a time shall be allowed.

The Chairman — You have heard the motion of Mr. O'Brian. Those in favor of rising to report progress and ask leave to sit again will say Aye, contrary No. The motion is agreed to.

(President Root resumes the Chair.)

Mr. Marshall — The Committee of the Whole desires to report progress regarding General Order No. 46 and to ask leave to sit again.

The President — The question is on granting leave to the Committee to sit again. All in favor will say Aye, contrary No. The Ayes have it and the leave to sit is granted.

What is the further pleasure of the Convention?

Mr. J. L. O'Brian — Mr. President, under the special rule adopted yesterday the Committee on Rules was required by the House to bring in a special rule this morning because unfinished business in special orders conflicted with a special order already set for this morning, and I assume that some fair limit of debate should be settled. I therefore move to amend the motion so as to provide that the House do now go into the Committee of the Whole, and that ten minutes' time be allotted to the consideration of each amendment, and the final vote be taken on the main question not later than 1 o'clock.

Mr. A. E. Smith — Mr. President, I don't think that is fair-treatment of this subject.

Mr. O'Brian — Move to amend.

Mr. A. E. Smith — No, I don't move to amend. I argue against your amendment to Senator Wagner's motion. That is the easiest way. And in that argument I desire to say to the House that this article was discussed all day yesterday; amendments were made to it changing it very materially; some of the amendments were only made this morning and have not been discussed at any very great length. Now, I repeat what I said but a moment ago when we were in the Committee of the Whole, I don't know anything more important than this particular question — with the exception of the short ballot, Senator Brackett's. To limit us down to just one hour for about fifteen amendments seems to me like putting a steam roller over it. We may be sorry for that later, and an hour or two that we save to-day may be lost to us at some future time. It is possible that this be put in shape to satisfy everybody, but it will never be done in an hour.

Mr. Wadsworth — Why not find out what would satisfy the gentleman from New York, how much time would satisfy him; how much more time he thinks we ought to give to it. I agree with him that it is a most important matter. How much more time do you think we ought to give?

Mr. A. E. Smith — I am unable to say to the gentleman from Livingston how long it will take, but if ten men each speak from five to ten minutes on each amendment, why, by the time mine is reached, I won't have a chance to say, "How are you?"

Mr. Stimson — Mr. President, I am very anxious to find out how much time is required, because the Committee, of course, is not at all anxious to preclude or shorten the debate, but it is aware of the fact that it has already overstepped the time allotted to it by its special order, and we should like to know about how long the gentlemen who have made amendments would require. I can say for myself that I should like not more than ten minutes or at the outside fifteen minutes to close up the matter, to speak on behalf of the amendments which the Committee made and in answer to the amendments which have been made by other members of the House. Now, perhaps if some of the other gentlemen who have important amendments will help us out, we can be enabled to fix a time that will be fair to everybody.

Mr. A. E. Smith — I would like to have a half hour.

Mr. J. L. O'Brian — Mr. President. May I modify my motion to provide that the final vote be taken at four o'clock. That allows two full hours for these amendments and the final debate. But I really think, in view of the long discussion we have had, and the fact that we have three other special orders set for to-day, that is a fair arrangement. That will allow ten minutes for each amendment and to briefly discuss the main question, the vote to be taken at four o'clock, not later than four o'clock.

Mr. Wadsworth — I think we have to adjourn by the rule, at five-thirty?

Mr. J. L. O'Brian — Yes, sir.

Mr. Wadsworth — Why not take the final vote at five o'clock? We would do nothing between four and five-thirty. The members of the House would all be tired and would not feel like taking any other amendment.

Mr. J. L. O'Brian — Under my motion, Mr. President,— under my motion the vote may be taken, if the House desires it, prior to four o'clock. My motion is not later than four o'clock.

Mr. Wagner — I will accept the motion offered by Congressman Wadsworth, that we take the vote not later than five-thirty — five-thirty, was it, or five?

Mr. Wadsworth — Five.

Mr. Wagner — Five. That will give us ample time to discuss the subject.

Mr. Wadsworth — I did not make any motion, Mr. President; simply an inquiry.

Mr. Wagner — I will accept the suggestion and incorporate it in my motion.

Mr. J. L. O'Brian — This matter is entirely in the hands of the House. The Committee on Rules has no desire to fix any time except what is agreeable to the House, but the suggestion, so far as I am concerned, with reference to Mr. Wagner's motion, is that there be a time limit, a definite time limit, and one which would be fair.

Mr. Wagner — I think during the deliberations of the Committee on Rules, at which they fixed a time limit, they had not considered that there would be so many amendments offered this morning, and I think the increased number of amendments offered will justify an extension of time.

Mr. J. L. O'Brian — Mr. President, I will renew my motion as amended, that the Committee rise and report progress to the Convention and ask leave to sit again on this amendment, with a time limit of ten minutes.

Mr. Wadsworth — We are in the House now.

Mr. J. L. O'Brian — I beg your pardon. I have become confused with so many amendments to my motion. I now move that the House go into the Committee of the Whole on this pending general order; that ten minutes' time be allowed to each amendment and the final vote on the proposition and the amendments be taken not later than 5 o'clock.

The President — Are you ready for the question upon that motion?

The Chair will restate the motion, as he understands it: that the House now go into the Committee of the Whole on General Order No. 46; that ten minutes be allowed to each pending amendment, and that the final vote be taken not later than 5 o'clock.

Mr. Barnes — Does that mean ten minutes for each amendment or ten minutes for each speaker?

The President — It means ten minutes' time for each pending amendment.

Mr. Barnes — Then one man can consume the entire time.

Mr. Wagner — Mr. President, are we considering my motion now? I take it that Mr. O'Brian is moving to amend my original motion. I do not understand that he incorporated in the amendment that only ten minutes should be taken for each amendment.

The President — The Chair so understands.

Mr. Wagner — Mr. President, may I suggest that so long as we have the time fixed for the final vote that we should not limit the debate to a definite time on any amendment.

Mr. J. L. O'Brian — Mr. President, that is agreeable to me, except I want to call the attention of the House to the fact that all members must be considerate in discussing their amendments if there is to be no limitation on each amendment. Otherwise, one man would take up all of the time. I therefore call the attention of the House to that fact, and withdraw my suggestion as to a limitation of time on the amendments.

Mr. Wagner — Then I understand, Mr. O'Brian, that you leave out the ten minutes altogether.

Mr. J. L. O'Brian — Mr. President, I will move to amend again by inserting a time limitation of ten minutes on each speaker.

The President — The Chair will now restate the motion. Will the gentlemen of the Convention pay strict attention, so that there may not be misunderstanding and consequent dissatisfaction. The Chair understands the amendment of Mr. O'Brian to the amendment of Mr. Wagner to be, that the Convention now go into the Committee of the Whole for the consideration of General Order No. 46, a special order of the day, that in the debate on amendments, ten minutes be allowed to each speaker and the final vote be taken not later than 5 o'clock this afternoon.

Mr. Wagner — Mr. President, I accept that as part of my motion.

The President — Is the Convention ready for the question upon that motion; upon the motion of Mr. Wagner as now amended. All in favor of the motion will say aye, contrary, no. The motion is agreed to. The Convention now goes into the Committee of the Whole with Mr. Marshall in the Chair.

Mr. Sheehan — Before we formally go into the Committee of the Whole, may I suggest that, if possible, the clerk have these various amendments that have been amended, printed and on our files before 5 o'clock, if possible.

The President — The Clerk will take notice of that suggestion. (Mr. Marshall takes the chair.)

The Chairman — The Committee of the Whole will resume its deliberations.

Mr. Olcott — I desire to offer the following amendment which is merely a coalescing of the amendment by Mr. John G. Saxe and of that by Senator Wagner.

Mr. Stimson — I would like to rise to a point of order. I understood the time for offering amendments had been closed, and I think it would be a rather dangerous precedent to extend the time indefinitely.

Mr. J. G. Saxe — Speaking on the point of order, as I understand, the time to offer an amendment is not closed until 5 o'clock under the rules.

The Chairman — I understand the situation to be this: When we opened the discussion in the Committee of the Whole I suggested that it was desirable that all amendments should be introduced at the beginning. That was only a matter of convenience and not a matter of rule. The Chair thinks the point of order is not well taken.

Mr. J. G. Saxe — Mr. Chairman, I ask the Secretary to read the proposed amendment.

The Chairman — The Secretary will read the amendment offered by Mr. Olcott.

The Secretary — By Mr. Olcott: Page 3, line 5, strike out the words "their duty" and insert in place thereof "the duty of such heads of departments and the Comptroller." On page 3, line 6, after the word "by" insert "at least one-third of the elected members of".

The Chairman — We now have twelve amendments before us, and the deliberations will be resumed on any one of them. We have thus far practically confined our attention to the amendments offered by Mr. Saxe, Mr. Quigg and Mr. Wagner.

Mr. Wagner — May I make a suggestion of procedure which will probably permit us to do our work a little more intelligently. Can not we take up each amendment and discuss it rather than have the different amendments discussed indiscriminately throughout the time left for debate?

The Chairman — That might be a good rule to adopt.

Mr. Wagner — I suggest that as a matter of procedure.

Mr. A. E. Smith — Mr. Chairman, I would suggest, further, that at the close of the debate on each amendment a vote be then taken on that amendment, because the attitude of the House towards an amendment may have something to do with the rest of the pending amendments. Now Senator Wagner's matter is clear and distinct, aside from any other part of the bill and could be disposed of immediately.

The Chairman — Under the rule, as I understand it, no vote is to be taken until the entire debate has been concluded. The hour fixed as the eventual hour, if the debate is not earlier concluded, would be 5 o'clock. As I understand the rule that would mean voting on all the amendments at that time and not piecemeal.

Mr. A. E. Smith — Mr. Chairman, I do not think that the rule had any reference to amendments. The rule, if I understand it rightly, meant that we were to vote on the amendment, which is the report of the committee, at 5 o'clock.

The Chairman — This is merely supplemental to the original rule which was reported, as I understand it, which provided that there should be one hour for discussion upon the amendments, and that at 12 o'clock the vote was to be taken.

Mr. Stimson — Will the gentleman yield? Rule 27 provides expressly as follows: "When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate."

Mr. A. E. Smith — Not previously acted upon.

Mr. Stimson — Under that rule in the case of each of the previous amendments which have been before this House, I understand that all of the amendments have been acted upon in their order at the close of the time limit.

Mr. A. E. Smith — The rules do not read that way.

Mr. Wagner — If I may be permitted to make a suggestion with reference to the construction of that rule, that has in mind, I think, that in case all of the time for debate upon amendments shall be consumed, that should not prohibit a vote upon the amendments proposed, but it does not prevent the Committee of the Whole from taking votes upon amendments as it proceeds in the discussion. It simply provides against a possible foreclosure of the taking of a vote upon an amendment if all the time is consumed in debate.

Mr. Deyo — Mr. Chairman, I move that we proceed to the consideration of each amendment offered to this proposal, in the order in which they were offered, and to vote upon the same in that order.

The Chairman — You have heard the motion. I am reminded by the secretary that there was a request made that these amendments be printed so that members of the Convention would have the text before them when they come to vote. I understand the Secretary has taken steps to obey that order. You may be somewhat embarrassed therefore not to have these amendments.

Mr. Stimson — May I make another suggestion? Since the suggestion of having the amendments printed was made I see that a number of the members have left the room and it will be much easier for the members to vote upon the amendments with a full attendance in this body if they know the exact time when the votes are to be taken.

The Chairman — I suggest that we shall take no vote, at any rate, whatever the ruling may be, before we reconvene at half past two o'clock. We have now fifty minutes for discussion for the amendments in general and by that time it is hoped that we will have the amendments in printed form and we can then act more intelligently upon the various proposals.

Mr. J. G. Saxe — Mr. Chairman, may I make one further

suggestion to supplement what has been said? Under the rule which has been adopted, each speaker can take only ten minutes. If you take up the amendments seriatim any speaker may exhaust himself on the first amendment that comes up. It seems to me that if anybody wants to take ten minutes he wants to be in a position to take those ten minutes on all the amendments because the rule is that no one can speak more than ten minutes on all the amendments proposed.

The Chairman — If there is no objection to the course which the Chair has indicated, we will not take any vote until we reconvene at the afternoon session, and the various amendments which have been proposed are now open for discussion.

Mr. Quigg — Regular order, Mr. Chairman.

The Chairman — I do not know whether the members of the committee understand the situation. We have reported to the Convention asking for additional time and additional time has been granted, and the right to debate is now operative.

Mr. Cobb — If the amendments are not to be taken up in their order, I will say just a word about the amendment that I introduced. It is not a fundamental or basic matter and I esteem the work of the Finance Committee so highly that I would not have thought of offering an amendment that was not consistent with their scheme nor one that I did not have reason to believe would be acceptable to the committee. This amendment simply provides that, with this budget which the Governor shall submit to the Legislature, he shall also submit the reports, opinions, evidence and estimates which are before him and upon which he has framed the budget. The whole idea is to make immediately available for the Legislature all of the information that the Governor has collected and upon which he has based his budget. I have no doubt that the Legislature by conducting their own investigation could accumulate the same material but it seems to me that it would be useful if the body which is to criticise the budget should have before it at once all the matter which was before the Governor. In accordance with this scheme of making a budget where the cards are supposed to be laid right on top of the table, face up, and everything to be public and known, I think it is just as well if, accompanying this budget, there is filed all the documents, papers, evidence and data and what not upon which the budget itself is based.

Mr. Stimson — Just a word on the amendment that Mr. Cobb suggests. The matter of having all of the material which is before the Governor also at the disposal of the Legislature was, of course, fully considered by the committee and it was supposed that that result would follow as a natural matter of course without making

it a constitutional provision. The whole course of procedure which the constitutional provision provided for was aimed to carry along precisely that result, culminating in the right of the Legislature to have the Governor himself, and the heads of departments themselves, including of course all material which they might produce then or formerly, brought before the Legislature. It was coupled also with the additional provision that the Comptroller, from whom so much of the financial matter of the State must necessarily come, should also be subject to call. So that while Mr. Cobb's amendment is in furtherance of the views and objects which the Committee had in mind, they felt that the matter was clearly covered by the provisions which were there. The discussion of the budget would take place, naturally, mainly at the time when it was defended and examined by the proponents and by the Legislature, and the provision of having the budget accompanied on its route to the Legislature by these documents did not seem to be necessary or the natural way of accomplishing that end. It further seemed to us that it was a provision so incidental and so ancillary, so to speak, to the procedure which we have provided, that it was within the realm of ancillary legislation in case any subsequent doubt or question should arise in regard to it. It therefore seemed to the Committee that the amendment in question was unnecessary.

Mr. Quigg — Mr. Chairman, it being evident that no one wants to debate this subject, I move that we take a recess until half past two.

Mr. A. E. Smith — Mr. Chairman, I understand that the motion was carried by the Convention to debate the amendments in the order of their introduction.

Mr. Deyo — No.

Mr. A. E. Smith — Mr. Chairman, I will go to my amendment. The amendment submitted by the Committee on Finance seeks to make unnecessary my proposed amendment that a two-thirds vote be required in both Houses for bills that are private and local in their character, and, while serving a State purpose, are intended to mainly benefit a certain locality. The language proposed by the Committee to cover that point and to make unnecessary my amendment is as follows: "including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the Legislature".

Mr. Stimson — Will you re-read that?

Mr. A. E. Smith — In other words, it will read this way: "shall submit to the Governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special

appropriation is desired at the ensuing session of the Legislature". Now, that is the Committee amendment to take care of my proposition for the two-thirds vote. I want to say to the Convention that that does not at all meet the situation. The great bulk of the special appropriation bills the department heads have no knowledge of, as to any desire on the part of the members from that section of the State that he requires this work to be done. Let us see how one of these bills that I have reference to reads. It says that the Superintendent of Public Works shall have prepared plans for the cleaning out of this creek and the removing of the dykes, "and for that purpose there is hereby appropriated the sum of \$30,000, or so much thereof as may be necessary, to be paid upon the certificate of the Comptroller and the warrant of the Treasurer". Now, what is that? That is a legislative direction, by law, to the Superintendent of Public Works to go and do this work. The Superintendent of Public Works would never be expected to put that item into his budget. He will have about forty of them. Remember, I only read to you yesterday the seventeen bills that became laws. I did not say anything at all about the bills that were introduced and did not pass, nor did I say anything about the bills that passed one House and did not pass the other. Now, yesterday I asked that we approach this thing in common sense fashion and I now ask this Convention if there is a man around this circle that believes that either the Governor or any department head of this State will send a budget in here the first month of the session with all such bills included. We all know that they will not do it, cannot do it. Sometimes the members only make up their minds to order this public work in their districts when they find other fellows getting it. It may be in the month of April, it may perhaps be in the month of May, after the budget has been proposed. Therefore the words "including a statement in detail of all moneys for which a general or special appropriation is desired" does not come anywhere near curing the situation. If anything, they just add a little lustre and a little shine to one corner of the proposed gold brick. Now let me ask anybody around the circle in what particular department a bill of this nature would originate. Here is a bill making an appropriation for the payment of an assessment levied against the State of New York by the city of Lockport for the improvement of Richmond avenue, adjoining the Erie canal in the said city. This was not only an appropriation bill but it was the establishment by the Legislature of a new principle, the principle that the State was to pay to the different localities, in the same way that any ordinary property owner pays, for local improvements, and in this particular instance the alleged improvement to

the State's property was to the canal. Where would anything like that come from? A street in the city of Lockport adjoining the canal paved with brick and the State of New York assessed \$3,128.82 as its share of the improvements! The theory of levying assessments on public property, public works, is that the adjoining property is in some way benefited by the improvement. Here we go down on record agreeing that the Erie canal was benefited by the brick pavement laid on Richmond street in the city of Lockport. Now where would a bill of that kind come from? It could only come from the city of Lockport. Now we have not made any provision at all for that class of legislation. That there is plenty of it I think I illustrated yesterday. When you can point to seventeen bills of that nature signed in one year, not to speak of passed, doesn't it appear to this Convention that there is some real reason for giving the force and the effect to that section that the Constitution of twenty years ago intended that it should have? What is that bill? Is that a State purpose? Can any man explain to me how the man who lives in Brooklyn should be taxed to pay some part of that \$3,200 on the theory that some of the property that he has a share in as a citizen of the State is benefited by that brick pavement? Nobody believes that.

Mr. Quigg—Why don't you make your amendment provide that a two-thirds vote shall be necessary on all private bills, without your qualification that it enables dispute to arise as to whether it is a benefit to the State or not?

Mr. A. E. Smith—Well, my answer to that is this: That twenty years ago it was written into the Constitution that this kind of bill should get a two-thirds vote, but the courts have defeated the section by saying that it is a State purpose, even though it mainly and directly benefits only one section of the State. Now, what I am trying to do is to put the language of the Constitution in the form that I believe it was intended to be in. I never could regard a bill of that character as being of state-wide purpose; neither can anybody else. But it passed this House with seventy-six votes.

Mr. Mann—Mr. Chairman, haven't the courts practically decided that the language in all these details purports to make a particular improvement general rather than local, and for that reason the courts have decided that since it is apparently a general bill, it is a State bill?

Mr. A. E. Smith—No, I don't believe that is exactly the theory upon which the courts proceeded. I don't think that a bill of this kind probably was ever questioned in court. I don't see how the courts could hold this to mean a state-wide purpose, because by its very provisions it provides that the — by its very

language, at least, it provides that this money is to be paid to the city of Lockport.

Mr. Wadsworth — What proportion of the whole cost of paving did the State pay?

Mr. A. E. Smith — I don't know. That would be up to the assessors. This assessment is levied on the basis of improvement, as to how much it improves your property. Some assessors or condemnation officers in the city of Lockport, in some peculiar way, came to the conclusion that the State of New York was benefited \$3,200 because this pavement was put alongside of the canal.

Mr. Wadsworth — The United States government in the case of public buildings pay one-half, and the city pays the other half. Perhaps that is the case here. The State pays half on its own property and the property owner or city pays the other half.

Mr. A. E. Smith — My answer to that is this: This is the first time in the history of this State that any such proposition as this had ever come up in either House. I have asked men familiar with the financial operations of the State for years back, and nobody has ever attempted to assess the State property for a local improvement. The city of Albany I don't believe — maybe some of the residents here from Albany could answer — I don't believe any assessment was levied against the State of New York for the paving of State street here, although we own Geographical Hall and we have the Capitol right at the head of State street. I don't think any assessment was levied against the State for the benefit of the city of Albany.

Mr. Hinman — No.

Mr. A. E. Smith — Mr. Hinman says no.

Mr. F. L. Young — There is a provision of law whereby the State property may be taxed for assessment, provided notice is served on the State Comptroller.

Mr. A. E. Smith — Where property is benefited?

Mr. F. L. Young — Yes.

Mr. A. E. Smith — Well, of course, I have yet to see the benefit that this Richmond avenue paving is to the Erie canal.

Mr. Low — I think that in the city of New York, the United States government, the State of New York and the city of New York all pay assessments for benefit where the property they own is benefited. Mr. Smith's suggestion that it is doubtful whether the pavement helps the canal is a different point. As to the main question of benefit, that is not a new thing. The United States pays for assessments for benefit, the State government and the city government, within the city of New York.

Mr. A. E. Smith — I doubt very much if the State of New York

ever paid to the city of New York one dollar in the way of assessment for the benefit of State property in that city.

The Chairman — Making due allowance for the interruptions, Mr. Smith's time is now up.

Mr. A. E. Smith — Oh, no; no — I am not finished yet. Now since last night I have had time to think this over. I am willing to give and take. I know that legislation in the last analysis is a matter of compromise. If I find the sentiment of the House is against my proposition for two-thirds on these bills I make this suggestion, to show that my heart is in the right place on this question: I would suggest a two-thirds vote on any private or local bill which mainly or indirectly benefits one section of the State, where the Governor failed to put it in his first budget. Now what am I seeking to do by that? If there is a local improvement in this State that amounts to something and there is an obligation on the whole people of the State to make it good and pay for it, the man that proposes it ought to be able to show that to the Governor before the first of January and if the Governor will put it in his budget or recommend it then it will be passed by majority vote; but if it is something which comes from the gentleman himself and he is unable to get the Governor to stand for it, it ought to pass by a two-thirds vote; and I want to say to the members of this Convention that this particular Lockport bill that I am talking about now, passed in both houses by the bare majority required to pass a bill. Now, my other amendment — I understand, Mr. Chairman, that I am allowed ten minutes on each amendment?

The Chairman — The Chair will be liberal in interpretation of the rule in your case.

Mr. A. E. Smith — My other amendment, I think there can be no question about it; the amendment to section 21, which reads "nor any obligation incurred". Everybody understands exactly what is sought to be done about that. It is the present State Finance Law, and the object of putting it into the Constitution is that where a bill of that character passes, the constitutionality of that bill may be attacked. At the present time nothing can be done under the Finance Law, because the appropriation bill itself that carried that item has the effect of law and makes it legal. That is plain on the face of it. Just by the way of closing let me make my position perfectly clear. I am looking at this question entirely from the side of the experienced man, a man who has had dealings with this proposition, listening to their being discussed, a man who knows what happened, and about practices in the Governor's office and elsewhere for at least five or six years back. I say this to you: The people of this State expect something from

this Convention to relieve them of this financial condition. It is the one thing that stands out in the State at the present time as the result of all the quarreling there was in Albany this winter. This is the place to cure it. There is a growing belief in this State that there is something wrong with the system rather than with the man. You have your opportunity, and my claim is that by your proposed bill, even with that amendment to it, you are not giving to the people of this State what they have a perfect right to expect from you, and anybody who supports this proposition, believing in his heart and in his soul that he is putting forth a cure for the evils of the present system, is making a very grave and a very serious mistake. It is simply a half-way proposition; nothing more and nothing less, and it should not be passed, because I believe that before the people come to vote upon this they will appreciate that they have received only a half loaf where it was possible for you to give them all the bread.

Mr. Leggett — I move the following amendment.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Leggett, on page 3, line 9, after the word "law" insert the words "all appropriations bills must be submitted by the Governor." Page 3, strike out lines 12 to 21 inclusive, and line 22 down to and including the word "for."

Mr. Leggett — The purpose of this amendment is to do just what Mr. Smith's last words recommended, and give them all the bread. The purpose of this amendment is to make it absolutely clear that all appropriation bills must be introduced by the Governor. Why not? If a power is left in the Legislature to introduce an appropriation bill, you are simply giving the Governor and the Legislature a chance to shuffle responsibility. Let the Governor take, not a part of the responsibility, but all of it. I know that the objection will be made that it prevents a member of the Legislature from introducing a bill in which he is specially interested, that is to say, a private and local bill. But, why not? Sometime it has got to pass the approval of the Governor. Let him present it to the Governor first. Let the Governor take the responsibility of saying to the people of New York that this is necessary as a private and local bill. You may say that that would hinder the passage of these bills. Well, is that to be regretted? And, if the Governor is not willing to assume the responsibility for endorsing, for giving it his approval, not willing to take the responsibility before the people of the State of New York, it is a mighty good indication that it is a bill that ought not to be passed. I think we are missing an opportunity, if we do not make that clear, and this is not a new thing. I understand that this is in practically all the English speaking governments, except the United States,

that the government assumes the responsibility for all appropriation bills that are introduced in Parliament, in the Canadian provinces, all over — in short in all English-speaking governments. It is no new thing, and if it does reduce the flood of local and private and special legislation, so much the better. That is what we all want, isn't it? Another consideration, while I am on my feet, about the effect of this proposition as a whole. I think some of us have had an idea that it reduced the importance and the prestige of the Legislature. Reflection on that has led me to think that it will have precisely the contrary effect. It has seemed to me when reflecting on the fact which we all recognize, that not only the Legislature of this State, but the Legislatures of all the States of the Union, and including Congress, have of late years been depreciating in the minds of the people. They have been occupying a less and less important and respectable position. In comparison with the executive office, the Legislature has sunk in the balance. I have regretted and I believe that every gentleman here regrets and deplores that fact, and is it not partly due to this very condition that the Governor, the executive, in all these cases, has the last say on all appropriations and the last say is the important say. If it were not for the fact that the Legislature can override the Governor's veto by a two-thirds majority in any of his acts, virtually the Governor would be an absolute dictator, and he need not say anything, only exercise that negative power. Now, this proposition reverses the procedure. It gives the Legislature the last say, and this say is final. There is no getting away from it, or getting by it, and I believe that the Legislature sitting as it will here, in judgment on the recommendations of the Governor, will be restored to a position of greater dignity than it has ever held in the opinion of the American public at least for the last half century, and I believe that this is one of the great virtues of this proposition.

Mr. Austin — Like many other members of the committee who participated in the preparation of this article, I have had nothing to say about it, and I intend to have but very little to say about it, except that I support it most heartily in its entirety with possibly one slight exception. The only thing that I wish to take up the time of the House with is to express the hope that, at least, one of the amendments so earnestly urged by Mr. Smith, be not adopted, and that is his proposal to insert upon page 4, line 5, after the word "management," the words "nor any obligation incurred." In other words, he urges, and with a great deal of force and earnestness, in certain ways, that we should provide in the Constitution that no obligation shall be incurred by the State or by any department thereof, unless there is in existence an appropriation from

which it can be paid. That carries with it the corollary that if any person should be so foolish as to trust the State for services or for materials in a case where there is no appropriation then in existence to pay for the same he could not recover his money or be paid. That is a matter of law now as my attention is directed to the fact by Mr. Wadsworth. It is now proposed to put it into the Constitution. I wish to say this would be a great mistake. Possibly conditions have arisen under the present system, which were not what they should be; but just suppose for one moment that after this Legislature had adjourned, the machinery of some kind of one of our great institutions should go wrong; assume that the boiler blew up and put the entire mechanics of the institution out of business. Now, if this were in the Constitution, in spite of the fact that you might have a thousand inmates in this institution demanding attention, must be looked after,—assume it was a prison; something must be done immediately to remedy this condition; you could not with this provision in the Constitution incur the necessary obligation without calling your Legislature together.

Mr. F. Martin — Could not a claim of that kind be presented to the Court of Claims, the same as in the city of New York, where there is a similar provision, and be paid, if it were a just debt?

Mr. Austin — It could not be, if you had a provision in the Constitution providing absolutely that any obligation incurred under these circumstances is void.

Mr. F. Martin — If it were a claim against the State, a just claim, it could be paid.

Mr. Austin — It could not be paid, if it was an absolutely void obligation under the Constitution. Now, there are any number of other instances which might be cited of the same character. There has been no great abuse of this function permitted, to my personal knowledge, while its insertion in the Constitution might prevent some very small loans and create a situation which would cause the greatest embarrassment to the State.

Mr. F. Martin — Mr. Chairman, I beg to differ with the last speaker in reference to claims of this character.

A clause such as is now sought to be put into the Constitution has been included in the charter of the city of New York for years, and it was found necessary because of the fact that many claims were presented which the Courts held the city was not liable upon under the existing law. After such a clause was placed in the charter of the city of New York, the Court of Appeals of this State held, that the city might pay such equitable claims in spite of constitutional provisions, and although such

provisions were offered as a defense. It was held that where the city had an obligation such as the one spoken of by Mr. Austin, where the work was of an emergency character, and such as was referred to here, that the city could pay such a claim, in spite of charter and constitutional provisions.

Mr. Austin — Well, this is not preventing payment of obligations, but the payment of obligations incurred without appropriation.

Mr. F. Martin — I fear not; because the clause of the city charter is that no obligation can be incurred unless there is prior appropriation and, although the claims have been held void, the court has held that such claims might be paid. So much for that subject. I don't believe that a budget is going to cure all the evils that some of the speakers believe it will cure. The city of New York has had a budget for a long period of time and has had a system similiar to the system now sought to be put in force, and the spending of money has continued, even though the budget conditions were fully carried out. Hearings have been had where the heads of departments have been brought before the Budget Committee, and the heads of departments have been questioned concerning the spending of money and yet the spending of money in New York to-day has increased to an alarming extent. I feel that a clause such as Mr. Smith has sought to place in this Constitution by his amendment, which will stop the incurring of debts and obligations unless they are previously put before the Governor, will aid greatly in stopping the spending of money and do more to stop extravagance than the installation of a budget system.

Mr. Mann — The gentleman from New York, Mr. Martin, told us that, notwithstanding the provisions in the charter, bills of that kind were nevertheless allowed, on the ground that the city might pay them. He forgets, however, that if put into this Constitution, the Court of Appeals could not decide that they could be paid, since it is in violation of the Constitution itself. A charter is not a constitutional provision; it has the mere force of ordinary law, but does not have the force of preventing the Court of Appeals or anybody else making a law to permit the payment of anything at all unless appropriation had been made therefor.

Mr. F. Martin — The constitutional provisions were set up as a defense to these very claims when they were asserted against the city of New York.

Mr. Mann — There is nothing in the Constitution with reference to the charter.

Mr. F. Martin — No, but a violation of the Constitution is always a defense to a claim.

Mr. Mann — True; but on account of a constitutional violation, when there is nothing in the Constitution about it?

Mr. F. Martin — It could, if it were giving public money for a private purpose.

Mr. Mann — Yes, but this is not a private purpose we are discussing now; this is a public purpose.

Mr. Low — In view of the references made to the budget system of New York city, I would like to say very briefly that, although the expenses of the city have increased with its size, as the budget system has become more and more effective, it has resulted in decreasing the sums spent for administrative expenses, so far as those are under the control of the board of estimate and apportionment. I recollect last year the sum spent by the city of New York for such purposes, subject to the control of the board of estimate and apportionment, was \$2,000,000 less than had been spent the year before. Therefore the budget system, as judged by the city of New York, may be effective.

Mr. Stimson — Mr. Chairman, there seems to be nobody at the present moment who desires to be heard. It is within five minutes of the time of recess. I move that we take a recess until 2:30 p. m.

The Chairman — We are now in recess.

Whereupon, at 12:55 p. m., the Convention took a recess until 2:30 p. m. of the same day.

AFTER RECESS—2:30 P. M.

Mr. Louis Marshall in the Chair.

The Chairman — The Committee will come to order. We will now resume consideration of General Order No. 46. I desire to say that although the rule which has been adopted provides that the vote shall be taken not later than 5 o'clock, if the debate is closed before that time we shall be in readiness to vote upon the various amendments, and upon the measure itself as amended irrespective of whether 5 o'clock has come or not. I make this statement so that there shall be no misapprehension, and so that the members may be present in the chamber to vote when the time for voting shall arrive.

Mr. Rodenbeck — Mr. Chairman, may I take up the amendment I proposed?

The Chairman — Yes; that will be in order.

Mr. Rodenbeck — Mr. Chairman, I think that I shall withdraw the amendment. It merely relates to phraseology, and in talking with members of the committee they seem to think that their language is appropriate. I do not think I will take up the time of the Convention to discuss it.

Mr. Chairman — If there is no objection, the amendment proposed by Mr. Rodenbeck is withdrawn.

Mr. Dykman — I desire to say a word to dispel, if possible, the idea that we should proceed upon the theory that a complete separation of executive and legislative functions is necessary, or that such a complete separation was ever a political ideal of the founders of this republic. Such a complete separation is, in my judgment, opposed to the ideals of which I have spoken. If the complete separation of Legislative and executive functions ever was the ideal of the republic, it should be abandoned, in my opinion. It breeds friction; it proceeds upon the idea that friction is necessary between these two branches of the government, that suspicion is the proper attitude of the executive toward the legislative or the legislative part of the government toward the executive. I read from the provision of the Wisconsin Board — the State Board of Public Affairs, touching the budget. This organization aimed at a condition that could never be reached, and there was danger that the development of the plan for checks and balances would leave the regularly constituted organs of government so weak that they would be not only without opportunity for the exercise of tyrannical power, but with scarcely strength for a performance of the legitimate functions of government. This is what has actually happened. We have made our official heads so weak that there have come to be those who through party organization have exercised control over our nominal leaders. I believe, Mr. Chairman, that this budget system will tend to bring into the executive office stronger men, will tend to make the man who occupies the executive office stronger. And so I would say that if this complete separation of executive and legislative function were the ideal, it should be abandoned. But my main proposition, and my main desire is to answer Mr. Saxe, and to try to show that this never was the ideal of the founders of the Republic. A great Chief Judge of the Court of Appeals quotes Mr. Justice Story upon this subject as follows: "But when we speak of the separation of the three great powers of government and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is that the whole power of one of these departments should not be exercised by the same hands, which possess the whole power of either of the other departments; and that such exercise of the whole power would subvert the principles of a free Constitution." And Mr. Madison, in *The Federalist*, wrote of this idea as follows: "The oracle

who is always consulted and cited upon this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. * * *. "From these facts, by which Montesquieu was guided, it may clearly be inferred that in saying 'there can be no levity where the legislative and executive powers are united in the same person, or body of magistrates;' or, quoting him again, 'If the power of judging be not separated from the legislative and executive powers,' he did not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted." Mr. Madison's idea was that either department might have a partial agency or a partial control over another, such a control as this budget scheme provides.

Now I was disturbed for a minute or two when Mr. Weed spoke this morning of insults to a Governor or heckling of a Governor, and, to satisfy myself, I tried to visualize what might happen in this chamber or in a committee room when the Governor should be called by the Legislature to justify the expenditure of the money for which he is asking, for the Governor is asking for the money written down in the budget. It troubled me for a moment to think of some of the Governors of the State of New York during the past twenty years being called before a legislative body to justify a budget, but, on reflection, it has seemed to me that something like this would happen; upon one day the Governor might be told what inquiry the Legislature proposed to pursue, what particular items of the budget were to be questioned, and it would not go much farther than that. We must assume, we must certainly go forward upon the proposition, that the composite sense of the Legislature will be wise and patriotic. The Legislature will not assume or believe that the Governor knows every detail of every expenditure which he has recommended. And when the Governor is told what the Legislature proposed to inquire into, there will be another day and another session when the Governor will come, attended by the head of the departments who have recommended the expenditures, and then by the Legislature and in the presence of the Governor the heads of departments will be required to justify to the Legislature and to the Governor the propositions they have made. And all this will be tried out here, nominally, in this chamber, or in the Senate chamber, but in reality, before the

court of public opinion, and the judgment which will be entered will be entered outside of this hall on the evidence taken here, but by the great court of public opinion; and if the cabinet officers justify their demands before this Assembly, or before the Senate, to the Senate or to the Assembly, and to the Governor, all will be well, but if they fail, the Governor may take the action,—may exercise the power that is put into his hands by other sections of the Constitution which I believe we will propose. Now, let me reassure the gentlemen who are afraid the Governor will be insulted. That will never be allowed by public opinion. The Governor will be respectfully treated; but if those gentlemen whom he chooses to execute the laws, to carry out the laws, are not able to justify the expenditures they recommend, then they will fall, and they will go out and use care and circumspection in recommending expenses to him. There will be no greater control of one branch of the government over another branch of the government than is recommended by Mr. Justice Storey in his Commentaries and by Mr. Madison in *The Federalist*.

Mr. Reeves—Along the lines of what Mr. Dykman has said, I would like just a few sentences as emphasizing the thought that was so well expressed here this morning that we are getting to be entirely too free in the criticisms and doubts with regard to our Legislature; and it seems to me that the splendid samples of our legislative force who are in this Convention ought not to be found logically taking part in thus dealing with the Legislature itself. Let me call your attention to the last paragraph of the amendment proposed here, No. 8, proposed by Mr. Smith of New York. The proposition is not only that bills providing for appropriation of money for local affairs shall require a two-thirds vote in the Legislature, but those that are of a State nature, unless it is certainly a state-wide affair, with only a few little exceptions; and a large number of what were called local bills were instanced by Mr. Smith as showing the way in which the present Constitution has been treated. Now, Mr. Chairman and gentlemen, one of two things is true with regard to those bills which are mentioned; either they were local bills, or they were not local bills. If they were not local bills, then all his argument based upon them falls to the ground. If there were any of them local bills and were passed without a two-thirds vote of the Legislature, they were unconstitutional, and the right way, instead of this Convention trying to patch up that portion of the Constitution, is to take some of those bills, some of those laws and test them in the Court, and show them to be unconstitutional, and stop such practices, for our present provision is absolutely ample. Now, I know what the answer to that is, coming from the practical statesman. He says, "but, we cannot

trust the courts; they are certain to say that these bills are all local bills." And there we come at it again, we cannot trust the courts. We have got this uncertain, undigested addition to our Constitution, because we cannot trust the Legislature, and we are unwilling to test this matter out in the courts, because we cannot trust the courts. Now, if we take in the same way, the proposed amendment No. 9, introduced by our genial Senator, Mr. Wagner, we find the same difficulty. Down at the bottom of it, he cannot trust the Legislature or either branch of it, to act in a fair, manly, open and proper way when rightly and fairly the Governor is needed before that body for interrogation, to bring him into that body to be questioned.

Mr. Wagner — Do you think it likely that a majority which, for instance, feels justified in enacting a certain appropriation — suppose it is of a political nature, I mean, in the way of patronage or something of that kind, they feeling that they are perfectly justified in passing the legislation, will ever invite the Governor before them to justify it?

Mr. Reeves — Mr. Chairman, my experience, possibly, leads me to answer to that question that in a case where it is proper and right and fair, with the public observing what is going on, and there being a real need that the Governor should come before the Legislature for interrogation, they will bring him there; otherwise, you are not trusting, as you should, your Legislature. The same argument that would let one-third of the members elected bring the Governor here would let one-quarter of them or one-tenth. I would like to ask any of the legislators present what they are going to do with that little minority that we find in the Legislature, coming from the rapidly vanishing party. Are not they to have the right to have the Governor here? If you start on any system other than saying that the Legislature as a body, or either branch of it as a body, may, as a set of gentlemen, in a dignified way, ask the Governor to come here and ask him, by virtue of a vote of the body, so that it is a body as such that speaks, — then you belittle the Legislature; and when you say the Governor would not come, you belittle him. It seems to me that if there are a few men in the Legislature who want to know about these things, they can go outside and go downstairs and go ask the Governor; and if you answer that he would not respond properly, then again you are doubting him. Now, as for myself, lacking the experience of a practical legislator and speaking largely, I know, from the outside, I want now and I want through the rest of my life to feel that we can trust our Legislature, and I want to feel that we can trust our courts and I want to feel that we can trust the Governor of this State in crucial times, to do substantially what he and they

believe to be right. And I feel very strongly also that I can trust this Committee, that has given so much time and care and thoughtful investigation to this Proposed Amendment. I am heartily in favor of a budget. I believe we have here a work of the very best framing and care and skill and it ought to be adopted without these amendments that I have mentioned.

Mr. A. E. Smith — Will the gentleman answer a question before he concludes? Does he agree with Senator Saxe that it might embarrass a Governor to have the minority ask him any questions about a budget that he himself prepared?

Mr. Reeves — I do not believe that the Governor is destined to be embarrassed by any questions that are going to be put to him with regard to his own budget.

Mr. Baldwin — Mr. Chairman, I did not intend to say anything on this budget question but I cannot refrain from answering the gentleman from New York on some of the questions Mr. Reeves has raised on the proposed amendment of Mr. Smith relating to the passage of local bills, of private bills, or rather defining what we mean when we say local or private bills. As I understand this plan the Governor can include in his budget anything he desires. After that the Legislature can make special appropriations. This plan that Mr. Smith suggests is that any such matter that may be enacted by the Legislature, of a local nature, shall require a two-thirds vote. Now the difficulty with the present language of the Constitution is the difficulty of determining what is local concern — and local concern is used as distinguished from State concern. Now nearly everything that is of local interest is of State concern; the question of health is a question of State concern, so when a bill is introduced to drain a swamp they can say that is of State concern. The question of highways is a State concern, so anything which goes to the benefit of highways, the building of a bridge, may be used in that sense. The only object of that amendment is to see that although it is State concern, in the broadest term, where the local locality is benefited, a two-thirds vote of the Legislature shall be needed. Now in this connection I desire to quote from this morning's *New York Sun*. There is a very enlightening editorial which is headed "A Valuable Suggestion from the Old Confederate Constitution." It calls attention to the fact that the framers of that document had the benefit of the experience of the founders of this government, working under the United States Constitution, and they provided for an executive budget in effect and then they added this language, from article I: "Congress shall appropriate no money from the Treasury except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and

estimated for by some one of the heads of departments, and submitted to Congress by the President." And after discussing the provision, the editorial closes with these words, which I think are very apt at this point in our discussion: "Is it only the general running expenses of State Government, the ordinary or regular appropriation bills, that need to be safeguarded by the admirable budget scheme which Mr. Stimson's Committee has proposed to the Convention at Albany? Are the special appropriation bills, which are to obtain consideration only after both Houses of the Legislature have finally acted on the regular bills, less clamorous for restrictive treatment? How does the wisdom of the Committee on State Finances, Revenues and Expenditures regard the proposal not only to adopt the budget feature of the Confederate Constitution, but also to apply courageously to the entire class of special or extra-budget appropriations coming subsequently before the Legislature at Albany the requirement of the two-thirds vote to pass them, instead of the mere majority vote as now? What public interest would suffer? What honest claim would be ignored? What millions would be saved?"

Mr. D. Nicoll — Mr. Chairman, I did not write that editorial in *The Sun*, but I made that same proposal yesterday, as I recall it, during the argument with Mr. Smith. We have had some discussion in the Committee on State Finances during the recess, and I found we were somewhat divided in opinion on the subject, and I feel myself at liberty, in view of the division, after discussion with the Committee, to move the amendment, to re-move the amendment, which I moved yesterday during the discussion with Mr. Smith, which was not handed to the Clerk, but seems to be the proposition stated by Mr. Baldwin.

The Chairman — The Secretary will read the amendment.

The Secretary — Line 21, page 3. Insert the following after the word "shall": "acquire the assent of two-thirds of the members elected to each branch of the Legislature and shall".

The Chairman — I suggest that the Secretary read the entire clause with the amendment so that we will know exactly how the clause reads.

The Secretary — "Nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall require the assent of two-thirds of the members elected to each branch of the Legislature, and shall be subject to the Governor's approval as provided in section nine of article four."

Mr. Austin — I have so far been so thoroughly in accord with the members of the Finance Committee that I find it very disagreeable to be so thoroughly in discord with them at this present

moment and with reference to this particular amendment which was favored by the Committee this noon, by a vote, I think, of nine or ten to five.

Mr. Stimson — My understanding is that there has been no Committee action, Mr. Austin.

Mr. Austin — Well, the Committee expressed itself, a majority of the Committee expressed itself in favor of an amendment of this kind. I think that is a perfectly fair statement. Now I am not a stand-patter. I am not at all alarmed about what Job Hedges used to call "this king business." I do not believe that the fall or decline of the Empire of the State of New York is going to begin when we first shear the Legislature of some of its present power. That does not worry me a bit. But there does come a point when I draw the line and when you propose, as is proposed by this amendment government by a minority, then and there is where I balk. Now this proposition is, in its final analysis, that no appropriation can be initiated by the Legislature itself except by a vote of two-thirds of the members thereof, or, in effect, without the consent of the minority. Now I am a budget man, through and through, and in the Committee I stood for a budget, and would stand on this floor for an executive budget which would prevent the members of the Legislature from adding any appropriation bill. Personally, I believe that that is the only way to have an effective budget, to limit the Legislature to revision, criticism, striking out and decrease of the executive budget. But, nevertheless, I concurred in the view of the majority of the Committee that at this time it was not wise to go that far. Therefore, we provided that if a majority of the members of the Legislature were not satisfied with the Governor's budget they might discard it, or the items to which they objected, and by a separate bill they might pass such an appropriation as they saw fit, as they thought was proper and necessary, and send it to the Governor for his action in the regular way. I concurred with that. Now you say that none of these separate bills — you are going to create a reserve power in the Legislature, but it is reserved only with the consent of the minority. Now there is no politics in his thing, gentlemen. I am not unmindful of the fact that out of the last five Legislatures two have been completely under Democratic control, I think, and two of them divided and one entirely Republican. Now I say when you go so far as to say that on a matter of State policy the Legislature must require the assent of the minority, you are going too far. I thoroughly concur with Mr. Smith in all that he said about the advisability of limiting the power of the Legislature as to passing local and private bills or bills such as he attempts to

define in the amendment which he proposes. I think he is absolutely right, but I do not think that you should require a two-thirds vote of the Legislature for a bill which initiates a new State policy, for which the party in power is ready to stand. In other words, I do not believe that you should say that by a majority vote of the Legislature they may create a department such as — if you will permit me to illustrate — the Department of Efficiency and Economy — that by a majority vote they may create that department, but in order to make an appropriation to make that department effective the consent of the minority must be obtained. Also remember, gentlemen, that by this proposal you are providing that a majority of the members of the Legislature may discard the Governor's budget entirely, if they wish to, or any items in it and only by a two-thirds majority may they put anything in its place. I ask if there is any consistency in that proposition? Now, I agree with Mr. Smith in practically all of the argument that he has made. I think you ought to limit these local appropriation bills just as strictly as you possibly can, but I do say, gentlemen, don't require the majority whatever they be, Republican or Democratic, to obtain the assent of the minority before they can put into effect a new policy or function of government which they may favor.

Mr. Stimson — We seem to have miscalculated the amount of time which members were desirous of having for discussing these amendments. Unless some one signifies his desire to debate this matter further I would like to give notice that I will say a few words about the amendment before the House and then move for a vote on the amendment.

The Chairman — I will ask the members of the Committee whether there is any gentleman here who desires to discuss any of the amendments which are now before us and which are fourteen in number? If there is anyone who so desires, I think he had better signify his wishes now, otherwise it will be taken for granted that there is no wish to discuss any of the amendments, and we will then consider the final discussion of the article in its entirety.

Mr. Wagner — I just want to take only a second to make one assertion in answer to what Mr. Austin said. He suggested that the amendment proposed by Mr. Nicoll, while it only requires a majority vote to inaugurate a new policy, or assume a new function, it would, under the amendment of Mr. Nicoll, require a two-thirds vote before such a policy could be put into operation. I radically disagree with him on that proposition.

Mr. Austin — Mr. Chairman, of course, if not recommended in the Governor's budget.

Mr. Wagner — Of course, it is natural to assume that if the Legislature passes a new function of government and the Governor approved that new function of government, he is in favor of putting it in operation; and if he is in favor of putting it into operation, all that has to be done is that the Legislature hold the budget back until the amount can be determined for the new function of government and include it in the budget, so that a majority can assume a new function of government and appropriate the money for the new function. If I am not right, I would like to be corrected.

Mr. Austin — The gentleman is perfectly right, if this determination has not been reached before the Legislature has acted upon the budget, but the hope is, and the hope of the introducers of the budget proceeding is that it will result in early action upon the budget and early passage of appropriation bills by the Legislature.

Mr. Wagner — My experience in the Legislature forbids me to join in that hope.

Mr. A. E. Smith — If I may be permitted a word in conclusion to show the very great difference between my proposal and the proposals offered by Mr. Nicoll, about which Mr. Austin just spoke. Now, I am not in favor of tying up the hands of the majority party by any constitutional provision. I am a firm believer in majority rule in the legislative body. They are the men who are charged by the people of the State with the responsibility, and it is entirely wrong in the Constitution or any place else to tie their hands in any way. Rules in legislative bodies were made only for the protection of the minority against the strength and force of the majority. They were never intended to tie the hands of the majority, because they contain a provision that permits the majority at all times to put them into shape in order that they may transact the business of the House. There is a great deal of difference between the two proposals. I am simply trying to get my two-thirds vote for the private and local bills and I am defining what it is in the Constitution with the language of the Court of Appeals so plain that everybody can understand what a private and local bill is. Now, let me give you a little illustration of how the majority could be held up under the proposal by Mr. Nicoll. Let us assume for the sake of argument that on the 25th day of March the budget passed. The budget contains a provision for the salaries of the judges of the Court of Claims and for their assistants. Before the first day of May it may be the policy of the majority that they would want to add to that court, two additional judges. It may be right. It may be open to dispute between the majority and the minority. The

majority may believe that the business of the State warranted it. The minority may think otherwise. Under this two-thirds provision, how could you ever get through an additional appropriation bill for the salaries of the two new judges if the Legislature saw fit to authorize them? That is what I call tying up the majority, not alone on the question of appropriations, but upon all of the State's business that is dependent in any way upon an appropriation. For that reason I think that my proposal is more scientific, that it goes to meet an exact situation that we are entirely well aware of. It cures something that we are able to lay our finger on. It takes care of the sore spots that we all know about, and the other is entirely too indefinite and may work to the detriment of the people by tying up a responsible majority in both Houses in the transaction of their business.

Mr. D. Nicoll — Mr. Smith is quite right when he says that the amendment proposed by me is not his amendment. This is an amendment proposed by me as one of the Committee on State Finances, not for the purpose of preventing the Legislature from passing hereafter the local bills to which Mr. Smith has adverted in the course of his remarks. Its purpose is different. We feel that if this provision about the two-thirds vote be put into the budget, be put into section 3, it would have the effect of inducing all persons who desire appropriations, either for local purposes or for general purposes, to go to the Governor, or to the heads of departments, in the first instance, and to induce them to put them into the budget. We cover, therefore, in this amendment not only the local or private bills, referred to by Mr. Smith, but we cover the bills for general appropriations, for State purposes, not local or private. Now, this question of the local bills, of course, is a very great evil. I do not know how much it amounts to. It seems from the discussions thus far to amount to perhaps a million or more dollars, and yet, at all events, it is a great evil. Some way has been found to evade the Constitution in that respect, and I think we ought to try to put a stop to it, and I think we are greatly indebted to Mr. Smith for the forceful, eloquent and vigorous way in which he has called it to the attention of the Convention, but that is not the evil that we are engaged in redressing now. We are now putting a provision in section 3 of the budget, which says, that after the Governor has made his budget and sent it to the Legislature, and after he is through with his amending of it, because you know he has the power to amend it, and after he is through with his supplements to it because he has the power to make supplements to it up to the last moment before its passage, that after that you shall not enact for general, or local or private purposes, except by a two-thirds vote, a financial

bill, and that we feel — a great many members feel — that that is really essential if the State is to get the benefit which we believe is to accrue from the adoption of this provision.

Mr. Hinman — I simply desire to say that it is my prediction that if this amendment is carried, providing for this two-thirds rule with reference to all such bills, that it will guarantee that the administration, in order to be on the safe side, will postpone consideration of its financial measures in the budget until the very last day of the session. Bear in mind the fact that the Governor cannot amend or supplement his budget after the Legislature has taken final action thereon.

Mr. Brackett — Of course, the proposition introduced by the delegate from New York, Mr. Nicoll, is hopelessly bad. I am reminded of a banquet that they had down in Tucson in Arizona in the early seventies of what they called The Old Inhabitants. None of them had been there three months, and they had a banquet of Old Inhabitants, and when they got through and were about ready to shoot out the lights, the presiding officer, the chairman who had presided during the feast, suggested as a mark of confidence in each other, to show the good feeling that existed and how they trusted in each other, they should each tell his real name. The real name, as applied practically to this amendment of my brother, is just this. I hope the gentleman from upstate won't fail to bear it in mind and remember it. It is going to work out this way. I don't suppose that he had any such thought in his mind when he formulated the amendment, but we fellows up in the country who now have very little influence with the executive and who will have a good deal less presently, and who are asked to put the knife to our own internals and to commit bankruptcy by the passage of this proposed amendment, the gentleman's amendment that is offered, when we are unable to get any relief, and when we want a little money for local purposes, for local relief, in cases which occasionally arise — when we cannot get it put into the budget and cannot get the Governor to recommend it, then, it has got to go into a special bill which, of course, the representative will introduce before we can get it through and get the much needed relief, and then we will have to go down and see Charlie and arrange a little for some Tammany votes in order to get it through. Now, you can laugh about it, but that is exactly what is going to be done, and if you are going to have anything in the way of financial relief, you will have to find the well-worn path to Fourteenth street, if that is still the place; if it has not been moved uptown. You will find the well-worn path, and you will use it, or you won't get anything. I confess that I have been a little bit peeved as I sat here during the debate and

have seen gentlemen who certainly, during the fifteen years that it was my good fortune to sit here, never once came into the purlieu of the Legislature of the State and know nothing about the practical workings, or legislative practices, of the State of New York, to see them, with a loftiness which is sublime, hold that everybody who has ever been a member of the Legislature is mistaken in telling what is going to be the effect of this legislation. As I recall, there is only one man who has been a member of the Legislature, and that is my Brother Stanchfield, who is in favor of this general amendment which has been reported.

Mr. D. Nicoll — Mr. Hinman argued for it last night.

Mr. Brackett — Mr. Hinman had an amendment.

Mr. D. Nicoll — Not very substantial.

Mr. Brackett — He had some amendment. I think it was Cato, wasn't it, Mr. Chairman, who always closed every one of his speeches with the prediction or with the statement that Carthage must be destroyed. The Legislature is being destroyed, and if it is to be destroyed I want to be the old Cato that calls attention to it, the stern old Cato that calls attention to the fact that the power of the direct representatives of the people of the State is being gradually taken away, and it is being tucked off down in the corner of the second story of the building here. And I want to say just one thing more as the final word I say on the subject. The gentleman from Albany, Mr. Hinman, has put in a proposition which is before the Committee on Legislative Organization, that the Legislature shall sit every month in the year. I want to tell you I am for that proposition just as soon as this amendment passes, and that is what it is going to come to. You cannot pass your budget until the constructive legislation of the year has been passed, and you know what the financial needs are,— whether it is an amendment, whether it is an addition to the Court of Claims, or what not, an addition to the hospital service somewhere. You cannot pass your budget until that legislation has passed the Legislature, because you cannot provide the financial needs for the legislation until the legislation itself is passed. The result will be that your budget, instead of passing earlier, will pass much as it does now, and if the legislative session is longer it still will go to the very end, the budget legislation will, and you will have, instead of a shortened legislative time — you will have, I verily believe, a session every month in the year, that Mr. Hinman has regarded as so highly proper and for which he has given some very potent reasons. Therefore, Mr. Chairman, calling attention again to the fact that the Legislature is being destroyed, I shall simply content myself hereafter by voting yes or no on the various amendments.

Mr. Deyo — Mr. Chairman, I am always intensely interested in anything uttered by our genial friend, that noble tribune of the people, from Saratoga county. I recognize the service, and the valuable service which he has rendered from time to time in the Legislature of this State. I do not agree with him in his conclusion. We are confronted here by a situation. It is not a theory. Whatever we may say about the merits or the demerits of our legislative body, it remains true to-day that, so far as economy and efficiency is concerned, it has fallen down. I procured a few minutes ago, from the report of the State Treasurer for 1914, the statement that the legislative expenses in 1914 were \$986,000, exclusive of printing. The legislative expenses for the year 1890, twenty-four or twenty-five years ago, were \$401,000, an increase of over 145 per cent. The legislative printing in 1914 amounted to over \$529,000.

Mr. Brackett — Mr. Chairman, of course the gentleman will remember that the Legislature was increased from 128 to 150 and from 32 to 50.

Mr. Deyo — I am aware of that fact, but that was not an increase of 145 per cent. The increase in legislative printing between 1890 and 1914 was from \$97,900 to \$529,938.27, an increase of over 445 per cent.

Mr. A. E. Smith — Does the gentleman know that in 1890 we did not have to print bills?

Mr. Deyo — We did print the bills. I was a member of the Legislature in that year, and I know what I am talking about.

Mr. A. E. Smith — Every bill?

Mr. Deyo — Every bill was printed and placed upon the desks. The same rule which prevails now, prevailed then.

Mr. R. B. Smith — Do you concur with me — because I have a claim in the Court of Claims at the present time involving — that the legislative printing includes the reports of every department of the State?

Mr. Deyo — Mr. Chairman, in answer to the question of the gentleman from Onondaga, I will give these figures: the total amount of printing, including the printing from the departments, in 1914 was \$861,000. The item which I gave of \$529,000 was simply the legislative printing, and the legislative printing only. The entire printing in 1890 amounted to \$107,000. In other words, there has been an increase of over 700 per cent. in the matter of printing in the last 25 years. Now we may bewail the rights of the people which are being surrendered because of the difficulties which we are trying to place in the way of this ready appropriation of money. I tell you, gentlemen of this Convention, the greatest service that we can render, the service which will be

most appreciated by the taxpayers of this State, is not a service which has to do with this flowery talk of the liberties of the people that are vanishing, but the service that will bring down our expenses to rock bottom. I know it is not popular to talk economy, but this State has run wild, and we who have been in the Legislature have been responsible for it to a large extent. Now, gentlemen of the Convention, I do not have any fears about any great calamity happening because certain things which once originated with the Legislature, we propose now shall originate in the Executive Chamber. We should not be blinded by the headlights. The road is clear ahead of us. We should not be confused by this sort of talk. It is a condition that confronts us and we are simply seeking to get appropriations and expenses down where they should be. I say that this talk of economy is not popular. I have in mind now a very active member of the Legislature some years ago who was sent from his district to the Senate year after year and the reason he was sent there, which was publicly known and publicly stated, was because he was able to get the appropriations for his district. I want to make it more difficult to obtain appropriations. It is useless for us to talk about economy, perhaps. It is an unpopular thing. But I would like to see the time when our public officials would cease to regard public office as a private snap, and seek primarily the public service. There has been a tremendous increase in the expenses of all departments. There has been a tremendous and alarming increase in the amount of salaries. There is an effort to be made right here in this Convention to increase the salaries of many of our officials. If we can learn to remember in the legislative halls a little of that old-fashioned, homely economy which our ancestors were gifted with, it will be better for us. I tell you, gentlemen of the Convention, that if the Legislature in the past 25 years had used half as much gray matter in trying to find out how they could economize as they have used in trying to search out new avenues, new sources of income, we would not be confronted by this difficulty. The trouble is that our appropriations are limited only by our income. The greater the income, the greater the appropriations. If we find we are running short on the expenses of our State government, what do we do? Cut down the expenses? Oh, no, we seek out some dead man's estate and see if we cannot tax that a little higher. The result has been, instead of using our efforts, instead of using our gray matter, instead of using our common sense, in reducing expenses to a point where they should be reduced — we are trying to cover up a deficit, not by a reduction of expenses but by seeking out new classes of property from which we may derive an income. The result is a burden upon

the people of the State. We have withdrawn from the local communities sources of income which properly belong to those communities. I believe that the effort we are making here is in the right direction. I believe that our faces are set towards the east and that, while this will not accomplish everything, it will accomplish something; and, for my part, I wish to congratulate this committee and the chairman of this committee for the magnificent and statesmanlike work which they have done in the preparation of this bill. One word further, in regard to the amendment proposed by my friend, Mr. Smith of New York. The amendment is not germane to the question pending before this committee. He seeks to amend section 20 of the Constitution. The committee's bill does not refer to section 20 of the Constitution. I do not think the amendment is germane. I think it should be considered by itself. I do not think it has any place in the discussion here. And, besides that, if the gentleman will observe, he includes appropriations for repair of the canal and for the construction and support of State institutions among those bills which are more or less local.

Mr. A. E. Smith — I except them.

Mr. Deyo — Let us see; "or for State purposes when less than the whole of the State is to be directly or mainly benefited by the expenditure of the moneys appropriated except appropriations for the repair and maintenance of the canals or the support or construction of State institutions." That is more or less of a private proposition. The rule of construction that the courts have laid down is that where you have an exception of that sort it is an admission that it is something which comes out of the whole.

Mr. A. E. Smith — I am sorry that the gentleman does not read it correctly. I except them from the appropriations where a part of the State is directly or mainly benefited. That is what I except them from.

Mr. Deyo — I may be wrong in my construction of that and I will yield to the ruling of the court, a ruling that I have very frequently been compelled to observe heretofore. But this has no bearing whatever upon the general argument. It is something outside the proposition before the Committee; and I think that Delegate Smith will himself recognize it. If that is to be taken up, it should be taken up by itself.

Mr. Green — It is with a great deal of reluctance that I arise to say just a word on this bill. I am beginning to think that this is no place for a layman. I wish I had studied law a little more in my early days and gotten my sheepskin. You know, you get confused here on these various arguments made by the learned

members of the bar and the judiciary, and you wonder where you are at.

Now it has been my pleasant privilege in the past to be a member of the State Legislature, and, somehow, I conceived a different notion of the class and character of men who composed the Senate and Assembly in the past and down to the present time than seems to be expressed by others here, and by some of the bills that have been presented. I feel like joining the gentleman from Saratoga in his refrain; I don't know just where we are tending in this legislation. I believe that you can get a better proposition if you study it very carefully than we have had in the past few years in arriving at conclusions, as to taxation, expenditures, etc. I desire very seriously, so far as I can, to help along that line, and I am the last one to send anything but bouquets to Chairman Stimson and the excellent members of his Committee. I believe they have taken a great deal of pains and given long study to the subject. I assume that this bill is desired. I assume it would pass in its present or a somewhat modified form. I do not know but I will be charged with heresy, but I did not reach my seat in this assembly by recognition by a political party. I came here because of the direct primary system in vogue here to-day and not by consent of the good-will of the organization down in my neighborhood. That is why I like our present law. There are propositions which we warned them of down there, to change and go back to the old system of caucuses and conventions, to get into the short ballot and give the Governor a great deal more power than he now possesses; to take away from the State Legislature, which is the direct representative of the people and of all the people, many of their present powers and to give to the Governor the appointment of a large number of officials now elected. If this bill becomes a law the Governor will have my sympathy, that is if he wishes another term, after he takes one bout on this proposition, because I believe it will not become necessary to write into the Constitution that the Governor shall not succeed himself. He has got to be more than a human being if he can "get by" with this and please the different factions of his party in the different localities and ever become Governor the second time. I am wandering a little in my talk but I want to say something about the Governor. If I vote alone, I shall vote for the Saxe amendment which does not permit the Legislature to beckon to the Governor to come to the halls of the legislative chamber, there to be heckled, as any good lawyer would for his client, in a cross-examination. I am not willing to belittle the dignity of the great office of Governor of this State by voting to compel that

Governor to be the obedient servant of the Legislature in coming here and having questions put to him as to why he did so and so, and as to what there is about this proposition. I am in favor of giving the Governor that dignified privilege of coming before the Legislature if he wishes to at his own behest and if he does that he will submit himself, I presume, to some sort of cross-examination, and if he be a good Governor he will be on his job; but it does not compel him by this Constitution to be at the beck and call of the Legislature. It has been said here it is not popular to talk economy and efficiency. I know it is, or it would not be talked so much. It is popular to talk it from the housetops and cut off some of the new fads and fancies that increase expenses, and I make a prediction that if you do not get this out of politics, instead of making for better efficiency and more economy in State expenses, you will be promoting the opposite side. You have got a decided responsibility. It is just as far from Schenectady to Troy as it is from Troy to Schenectady. You have simply backed things about again. You have got a great deal of the English system here, and somehow it does not go so well in the United States, and I am one of the old-fashioned sort who believe to-day, and I will continue to believe as long as I live, that the safety of this country is in preserving the dignity and quality and maintaining the separate powers of the judiciary, the executive and the legislative bodies, and not mixing them up and commingling them in this sort of a way. I believe that the people to-day care a mighty sight less what the government costs them than they do for what the government does for the benefit of the people and not to them. I am not in sympathy with the suggestion of my friend Mr. Smith, or anyone else who wishes to make legislation by minority only, and the warning given by Mr. Brackett ought to be sufficient it seems to me to stop that proposition in this Convention, and I don't wish to talk politics here, Mr. Chairman. I had hoped that we could come together on a basis where politics would be tabooed and where in this great financial time men of both parties would be selected who could judge of the best avenues for reaching the taxable properties of the State and go on with a financial plan. I am in sympathy to an extent with what Mr. Sheehan suggested, although I think that Committee could be considerably smaller, but I wish as a last appeal to state that I hope this great body will not under any circumstances vote to take the dignity away from the State's executive and make him a subject of heckling by the Assembly and Senate whenever they desire to cross question him on a proposition of this character.

Mr. Beach — Mr. Chairman, I merely desire to state to the members of this committee that we have before us purely and

simply a business proposition. This budget as outlined in this Proposed Amendment has been carefully prepared to meet a very unwise prevailing practice regarding appropriations. I want to say what I have to say in just as few words as possible but I want to call attention to the fact that when ex-Speaker Smith prefaced his remarks with the statement that the Governor would bring in the smallest budget possible, I believe that in that premise he was wrong. I believe that with this budget system as outlined in this amendment, the Governor will rise to his responsibilities and he will bring in a budget not only in which is included the maintenance charges of the several activities and functions of the State but all of the expenses which the State ought to have for that year.

Governor Glynn was asked that specific question when he was before the Committee on Finance, whether the Governor, any man who might happen to be elected Governor, could be entrusted with such power, and he answered unequivocally Yes, and he pointed to Prince Hal — Prince Hal who Shakespeare tells us, as a prince without special duties devolving upon him, was a roisterer and traveled around with Falstaff and boon companions, but when he was suddenly called upon to be King, that the beneficence of his reign was so great that it has left a bright and shining mark on the pages of history. It is only an exemplification of the old French motto, *noblesse oblige* — nobility obliges or in other words, rank imposes obligation. But how much greater than the obligation conferred by hereditary rank is the obligation which falls upon a man who is elevated to high rank by the votes of his fellow citizens who ask him to come forward and take charge of their business affairs. When a man has such obligation as that upon his shoulders he will be very careful to bring in a budget which is so statesmanlike, so businesslike, such a complete inventory and statement of all of the State's affairs that he can well afford to come before the Legislature and be questioned upon it, and if need be defend it.

Mr. Stimson — Mr. Chairman, may I ask again if there is any further desire on the part of any members of the Convention to be heard before the closing of the argument on any of the amendments?

Mr. Sheehan — Mr. Chairman, I do not desire to say anything except that I would like to direct the attention of Mr. Stimson, if he is going to conclude this argument, to one point of this proposed measure which has not been covered in the debates and I have received no information on the question and I hope before he finishes he may direct our attention to it. On page 3 it is provided, in line 9, that the Legislature may not alter an appropriation after it is submitted by the Governor except to strike out

or reduce items therein. What I would like to know is why the Governor should not be permitted to change his mind after the bill passes the Legislature and when it then necessarily goes before him? If for good reasons he desires to change his mind, why should not he be permitted to veto, as he now has the right under this proposal, to veto other appropriations passed independently of the executive budget? I can conceive of a situation where the Legislature and the Governor might be in conflict, and it is barely possible that a condition might arise where, let us say in the Department of Education, they might receive in the Governor's budget an appropriation, let us say, of five millions of dollars. The Legislature, if you will, might reduce it to a million dollars. That might seriously cripple the efficiency of the Department of Education. In order that the question might be acutely raised, why should not the Governor in a case of that kind be permitted to veto the item if he considered that it had been reduced out of all proportion to what it ought to be? Now, what I desire to inquire is to what extent the Committee discussed that whole question?

Mr. R. B. Smith — Mr. Chairman, I rise primarily to withdraw the amendments offered by me for the reason that they have been fully covered by other amendments before the Convention.

The Chairman — Let me put this to the House. Is there any objection to the withdrawal of the amendment No. 4 introduced by Mr. R. B. Smith? If not, that amendment will be deemed withdrawn.

Mr. R. B. Smith — In passing, let me say to my friends in this Convention who apprehend that this Proposed Amendment takes power away from the Legislature, that they are mistaken. Give me the power of the veto over the financial legislation of this State, and I don't ask for any more power. I will take that in exchange for the Governor's power of veto over the other legislation. As Senator Wagner has well said, the budget will be passed on the last day, if it can, of the session absolutely. There is no question about that. At that time and if the Legislature is wise, it will pass the budget and take a recess for ten days until the Governor exercises his power of veto over the other legislation, and then we will see where we get off. I sincerely trust that the men who have the direction of the legislative policy of the Legislature in the next year, if this becomes a part of the Constitution, and the succeeding years, will, upon the first day of the session say that not a single measure appropriating money will be passed except to come here upon the recommendation of the Governor, and place the responsibility for financial legislation upon him and give the Legislature the power of veto. I sincerely hope that this amendment, in any form you suggest, be passed and become a part of the Constitution.

The Chairman — I take it that there is no other member of the Convention who desires to address any remarks on these amendments, and I now extend the floor to Mr. Stimson to close his debate.

Mr. Stimson — Mr. Chairman, after the indulgence which I received from this Committee yesterday, the slightest return I can make is to be extremely brief and I think it is only necessary to point out what I conceive to be the answer to certain of the questions and problems that have come up during the past two days. In the first place as to the Finance Committee's bill, yesterday in deference to the arguments which had been received and listened to from our fellow members in this chamber, particularly the argument made by former Speaker Smith of New York, that this bill did not effectuate the purpose which this Committee had in mind when it put it out. Our Committee made and considered certain suggestions that had come up in the debate. As a result of that, I this morning introduced amendment No. 3, and after further discussion the Committee decided to make no other recommendation in regard to any other amendments which had been suggested. Individual members of the Committee felt slight differences of opinion about certain of the suggestions that had come up, but the Committee made no further recommendation, and I want to say for myself that after a full and careful consideration, giving, I hope and I think, careful attention to the suggestions that have been made in the very friendly spirit that has been evinced during this two-days debate, I still believe that this Bill No. 778, with these amendments which I have suggested, particularly if they be added, is a sound and workable measure and that if put into effect it will carry out and eventually accomplish the aim which is the evident aim of this Convention. Now, one word as to amendment No. 3. It was the purpose of the Committee in using the language on page 1, in reference to the estimates, that they should meet the financial needs of the department for which they were given, to include therein every purpose for which an appropriation could be asked at the next ensuing session of the Legislature. It was not their intention to restrict it to necessities in the sense for which Mr. Smith argued and which he thought might possibly be given as a meaning and a restriction to our language. I still think and the members of the Committee still think that the language which we originally used was sufficiently broad; but in deference to the suggestion, and in order that there might be no possibility of misunderstanding, we have proposed the amendment contained in No. 3, which is taken verbatim from the present law under which estimates for the departments are now submitted and which will make the sentence read as follows:

That the heads of these departments shall submit to the Governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the Legislature, classified according to relative importance and in such form and with such explanation as the Governor may require.

Now, under the administrative interpretation which has been given that law for some six years, that includes all estimates of all projects and all purposes which are to be asked for at the next ensuing session of the Legislature. The Committee feels that when that is taken in connection with the language that they used on page 2, in reference to the submission of the budget by the Governor, page 2, line 9, "that on or before the first day of February next succeeding he shall submit to the Legislature a budget containing a complete plan of proposed expenditures and estimated revenues," it was perfectly clear that the proposal set out in this bill made it the duty of the Governor to propose a budget which included all of the estimates for all appropriations which he deemed desirable for the ensuing session of the Legislature to grant. And I fail to see how any additional language could add to that. It is wholly inconceivable, by reference back to the faults of present practice which we are now trying to remedy, to get away from the breadth of those words. True, we now introduce an appropriation bill called the general appropriation bill, and we follow it up with a deficiency bill, which has grown so big that we call it a supply bill, and another bill for new construction that we call the construction bill. But the very purpose of this amendment is to get away from the evils of that practice and to provide that the plan submitted by the responsible author of the bill shall be a complete plan of all of the proposed expenditures and estimated revenues. Now, that being so, the only issue which can come up under the clause on page 3, line 17, giving the Legislature permission to initiate further legislation after the bill has been considered, would be in cases where either the Legislature took issue with the Governor and desired to add some additional matter contrary to his opinion, where the issue could be settled under the present conditions subject to his veto, or where the Legislature thought that a new function had arisen — the occasion for the exercise of a new function by the State, and as the representatives of the people we deem them to be the most appropriate agency for the initiation of such a new function, or where some change of situation had arisen in the impression of the Legislature since the submission of the budget. Now, it was the opinion of the Committee at the time we discussed this, that that had

reduced the possible evils down to a narrow basis, a basis which gave, as I expressed it yesterday, every inducement to a conscientious Governor to make his budget as complete and as thorough as possible, and where, in case he produced such a budget, he would have behind him all of the forces of public opinion, and yet, after that function had been performed, in view of the new step taken by this procedure, left in the representatives of the people under those safeguards the right to present within the three limitations that I have given, special bills which represent their views. Now, there has been a good deal of argument to-day about the necessity and importance of further restrictions upon those new bills. In view of the difference of opinion of the committee, to which Mr. Nicoll has alluded, the members of the committee agreed that they should be free to lend their individual support to such measures, or not, as they saw fit. But, let me call attention to those objections which have seemed to me to lie to the proposal of Mr. Smith from New York. I understand that he does not agree with the proposition put in by Mr. Nicoll and I think there is strength in the argument that he makes—that the proposition by Mr. Nicoll will take away and reduce the powers, the normal and natural powers of a legislative body to act by a majority. But the proposition which he makes himself seems to me to have this difficulty. Mr. Deyo pointed out the fact that it technically was not germane to this amendment. That touches upon what seems to me to be the real difficulty. The real difficulty is that the evil about which he speaks in connection with his local and private bills is not at all confined to financial bills and it should be made the subject of separate treatment, harmonious to all that class of bills. Section 20 is not touched upon by this committee, in its amendment, and a remedy has been proposed and is under consideration by this body, suggested by Mr. Wickersham, which would include such local and private bills. Now, it seems to me that that matter should be taken up by itself, in a way to cover the whole field, and in that I fully concur, and I think the great majority of the members of the Finance Committee concur with the viewpoint suggested by Mr. Smith, that it is a most lamentable condition of our present methods of legislation. But it is not an evil which is peculiar to financial bills alone. Now, it has been suggested by Mr. Smith of Onondaga, that if this system went into effect the Governor would put into his budget, as he expressed it, the good matters, matters out of which he wished to take credit and leave the others for the Legislature. That assumes a subtlety of mind which I am unable thoroughly to follow. I fail to see the road which could be taken there with safety by any Governor.

But I do call to the attention of this body that, under the proposed amendment, if any Governor should try to take that road, he could not travel it very far, before he could be asked some very embarrassing questions before the Legislature and in the public observation of the State. That is only another illustration of the importance of that other provision of the proposed amendment which gives to the Legislature the right to ask such questions. Before, however, I take up that subject, I wish to say one word about the suggestion made by Mr. Smith of New York, in regard to an oath. You have not introduced an amendment on that?

Mr. A. E. Smith — No.

Mr. Stimson — I have been unable to find one, and that will end that. Now, in regard to the other amendments which are before the House, amendment No. 2, by Mr. Sheehan, I understand was introduced by him, as he expressed yesterday, as a suggestion merely, in the very helpful spirit to which his whole argument was addressed. I do, however, sincerely hope that the amendment will not prevail because it contains the evils which I pointed out yesterday arising out of a diffusion of the responsibility of budget-making, and it follows almost precisely the form of provision or law which was passed in 1913, creating the State Board of Estimate, and which has, as I think has already been pointed out, proved entirely unworkable. In 1913 just such a board was created, composed of almost precisely the same members which Mr. Sheehan suggested, and at its first meeting it became deadlocked between the legislative and executive members and it never succeeded in making any report whatever. I think such an object lesson immediately before us should prevent us from making that mistake again. I think my argument yesterday sufficiently pointed out the objections of our committee to the substitution of any other officer of the State government for the Governor. That would apply to the amendments of Mr. Brackett and one or two others, who have sought to substitute the Comptroller. It would merely be making a second head of the State and would be open to all of the lack of responsibility, with the accompanying extravagance that comes from a plurality of independent executives. Mr. Rodenbeck has already withdrawn his amendment. I stated a little while ago my views in regard to the amendment suggested by Mr. Cobb. Mr. Cobb's amendment proposes a most worthy purpose, but it was the view of the committee when it was brought up before them, that it was sufficiently covered by their practice, and, as I stated before, it would be undoubtedly the necessary consequence of the hearings before the Legislature. The mere having of such hearings would necessitate the bringing before these hearings of all of the records

upon which they might be based. Mr. Leggett has introduced an amendment by which all appropriation bills must be submitted by the Governor. That, of course, would be in line with the concentration of responsibility, but it would entirely deprive the Legislature of the right of initiation, which it was the deliberate opinion of the committee after full and careful discussion, should be retained under whatever system was introduced as an incident of a new system. Therefore, when all was said and done, the committee, as I stated, decided to make no further recommendations in regard to the checks and brakes which could be put on those bills, leaving to individual action in case of difference of opinion. Mr. A. E. Smith had an amendment, No. 8, to add in page 4, line 5, after the word "management" the words "nor any obligation incurred".

Mr. A. E. Smith — I have been convinced by the argument of the gentleman from Greene, Mr. Austin, that it is not a wise thing to do, but I will tell you what I would like to do. I would like to insert some provision as to salaries.

Mr. Stimson — If the gentleman will permit me to say, I was going to suggest that that was a matter which Mr. Smith brought up before the committee, and which we regard as still open. It did not so closely relate to the budget that we felt like putting it in here. It was quite a different matter, relating to the possible abuses of contracts with the State. Now, speaking for the committee, I should be very glad to hear Mr. Smith on that matter with any new suggestions he makes at a time when we can give it better consideration and treat it with cooler care than we can in the heat of the Committee of the Whole. It does not seem to me that it is so closely related to the budget that it should be made a part of the bill now under consideration. I have very grave doubts, for that reason, whether it is germane to the subject.

Mr. A. E. Smith — I would like to say that we are amending the very section where it belongs, if it belongs anywhere in the Constitution.

Mr. Stimson — But, we are amending that section in relation to another matter, that is, matters of appropriations which are connected directly with the budget; and I would be very glad to assure Mr. Smith very careful attention if he cares to bring up his suggestion.

Mr. A. E. Smith — When do you mean?

Mr. Stimson — Before the Finance Committee, at any time he sees fit.

The Chairman — Do I understand that Mr. Smith withdraws that part of his amendment?

Mr. A. E. Smith — Mr. Chairman, yes. inasmuch as it it not

in proper form, I am satisfied to withdraw it, but I still believe this is the proper time to dispose of it, because it is simply and plainly a question that belongs here, as we are amending the section which is going to go into the Constitution, but inasmuch as I have not got my suggestions in due form which ought to be put in in view of Mr. Austin's argument, I will withdraw it.

The Chairman — If there is no objection, the first part of Mr. Smith's amendment, No. 8, which calls for the insertion, on page 4, line 5, after the word "management" of the words "nor any obligation incurred," it is withdrawn.

Mr. Stimson — Mr. Chairman, then in reference to the suggestion by Senator Wagner that it should be made the right of one-third of the Legislature to call the heads of departments and the Governor before them, the Committee feel very clearly that that amendment should not prevail. It is their intention in this proposal to provide a method by which not only the minority, but individual members, shall have an opportunity for making interrogation of the various heads of departments and the Governor which the provisions cover. The method which we provided for it is that the procedure for such appearance and for such inquiries shall be made by the legislative law.

Mr. Wagner — Mr. Chairman, as a practical question now, and not discussing the theory at all, do you think it likely that a Legislature, that the majority in any legislative body will pass an act which the Governor will approve, giving the minority of any Legislature, the right to summon the Governor before it to inquire as to any appropriation sought by it.

Mr. Stimson — No, that is not the question, but I feel it is practically certain that they will pass a law which will provide for times and methods of hearings by which, as a regular routine that matter will take place, and the law which they will provide will not be for the session in question but for all future sessions and which will cover and should cover, and necessarily so, and any bona fide operation of the system will cover appearance and inquiry by every member of the Legislature; any member; and the surest method of ascertainment that that will adequately represent all interests is that it will have to be enacted under a law which will receive the scrutiny of the Legislature and the scrutiny of the Governor and be applicable for all times.

Mr. Wagner — Mr. Chairman, I would like to submit that question to the members, to those who have been members of the Legislature, as to whether the Governor will approve legislation, which will make it easy to summon him before that body, and whether the majority of the body, would itself enact any such legislation.

Mr. Stimson — Mr. Chairman, I will now proceed with what is the last amendment, by Mr. Saxe, and I only want to say a word as to that. The same suggestion, which is made by Mr. Saxe, was made by Mr. Quigg, and I think by one other gentleman.

The Chairman — By Mr. Olcott.

Mr. Stimson — Yes, by Mr. Olcott. It was the view of the Committee, deliberate, after a long discussion, that the present lack of working relations which have been characteristic so long of so many of our States, was one of the deepest lying reasons for the inefficiency and lack of responsibility of our government. It was the view of the Committee that this provision of the amendment was one of the most important and far reaching provisions of the entire amendment. I have seen a letter in the archives of the Senate at Washington, signed by the first President of this country, and written in his own handwriting, in which he informed the Senate of the United States that he proposed on the following Tuesday to come and discuss with it a pending treaty; and it is well known that during the first stages of our government, the first administration, the laws of the United States provided for the personal appearance of the members of the President's cabinet before Congress. Now, the Committee felt very strongly that anything which in any way jeopardized the institution of a system which they deemed was important should not come into this amendment. They felt, therefore, that the provision which deprived the right of hearing the Governor, the proper reciprocity, might result in the entire overthrow of the system. If it was left purely discretionary, it might very easily drop into innocuous desuetude. Nothing might come out of it, out of the changes and reforms in the direction of responsible government, which the Committee felt to be so important, and, therefore, while they have the utmost deference for the point of view which has been put so fully and admirably by Mr. Saxe and by others in this House, they did not concur with it and they have felt that the danger which those gentlemen intimated they feared, could not arise. The whole purpose, Mr. Chairman, of the efforts which we are endeavoring to make by this amendment is to place the legislative body of this State upon its proper sphere, to elevate it to its proper position as the formulator of the general policies of the State, and not the mere dispenser of administrative patronage, and any objection which is based upon a fear that the body is not to be trusted seems to us to strike a blow at the very hope of the reform which we are trying to produce. You cannot make a body of men, or a man, trustworthy unless you trust them to behave like gentlemen and men worthy to be associated in joint parliamentary endeavor.

Mr. Chairman, I think that is all I care to say about this amendment. I think I have covered it and I thank you and the committee for the consideration that you have shown to me in it. I move the adoption of the general amendment.

Mr. Wadsworth — Mr. Chairman, Mr. Stimson has not touched upon the amendment that I offered here, but I want to say, very frankly, that in view of the amendment offered by Mr. Nicoll, I withdraw it and will be perfectly satisfied if a vote is taken on the amendment offered by Mr. Nicoll.

The Chairman — Is there objection to the withdrawal of amendment No. 11, offered by Mr. Wadsworth?

Mr. Stimson — Mr. Chairman, I am reminded that I have not answered Mr. Sheehan's question.

The Chairman — Just a moment, Mr. Stimson, until we dispose of the pending matter. The Chair hears no objection, the amendment of Mr. Wadsworth is therefore withdrawn.

Mr. Stimson — By inadvertence, I omitted to answer the question Mr. Sheehan asked just before I rose. This proposed amendment has as one of its essential elements, as I tried to explain yesterday, the restoring of proper relative functions of the Executive and the Legislature. It was to provide for the making of Executive suggestions as to expenditure before rather than after the Legislature had acted. We felt that that involved as its necessary corollary that the Executive veto after the performance should be given up. To maintain it would be certain to deprive the Executive in making up the budget of any sense of final responsibility. Anybody in making up a budget in which he is going to have a chance at it afterwards is not so careful as when he feels that he is acting for the first and last time. And, finally, it was intended to restore to the Legislature its sense of responsibility and dignity which necessarily would follow the fact and the thought that its action was final. Both of those reasons seemed to us to be perfectly conclusive that, on matters in which the Governor had the say in making up his budget, he should not have a second thought afterwards in the way of a veto.

The Chairman — The debate being now concluded, under Rule 27 we shall proceed to vote upon the various amendments in the order of their introduction. There remain eleven amendments, amendments Nos. 4, 10 and 11 having been withdrawn, as well as the first part of amendment No. 8. The question now arises upon the adoption of amendment No. 1, introduced by Mr. J. G. Saxe. The Secretary will please read.

The Secretary — By Mr. J. G. Saxe: Page 3, line 5, strike out the words "their duty", and substitute in place thereof the words, "the duty of such heads of departments and the comptroller".

The Chairman — A rising vote has been called for. Those in favor of the amendment will rise. The gentlemen will take their seats. Those opposed will rise. It is unnecessary to count. The amendment is lost. We will now consider No. 2, introduced by Mr. Sheehan. The Clerk will please read.

The Secretary — By Mr. Sheehan: Page 1, strike out line 11 and insert as a paragraph the following: "Public hearings on such estimates shall be called by the Governor, and there shall be associated with him at such hearings the Lieutenant-Governor, the Comptroller, the Attorney-General, the temporary president of the Senate, the senator receiving the next highest number of votes for temporary president of the Senate, the speaker of the Assembly and the member of the Assembly receiving the next highest number of votes for Speaker. The Governor shall require the attendance of heads of departments and their subordinates and such estimates shall be revised according to the judgment of a majority of such officers. If the Governor shall not concur in such revision he shall make separate itemized estimates of the financial needs of the State, except for the Legislature and the judiciary." Page 2, strike out lines 1 and 2. Page 2, line 12, after "certified" insert "including the separate itemized estimates if any made by the Governor". Page 3, line 14, strike out "that". Page 3, line 15, after "judiciary" insert "and items of estimate submitted in which he did not concur, which".

Mr. Sheehan — Unless some member of the Convention desires a vote on the Proposed Amendment I will withdraw it.

The Chairman — Unless there is objection to the withdrawal of this amendment which has just been read, it is to be deemed to be withdrawn. I hear no objection and the amendment is withdrawn. We will now vote on Amendment No. 3, introduced by Mr. Stimson. The Secretary will please read. The Secretary — By Mr. Stimson: Page 1, line 9, after the word "department" insert the words "including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the Legislature." Page 2, line 15, after "surplus" insert "or deficit". Page 3, line 5, after "duty" strike out ",". Page 4, line 6, strike out "within" and insert in place thereof "not later than". Page 4, line 7, strike out "next".

The Chairman — Those who are in favor of this amendment will answer Aye, opposed No. It is carried. We now come to Amendment No. 5, introduced by Mr. Quigg.

Mr. Quigg — The vote on Mr. Saxe's amendment is what might be called a sufficiency and I ask leave to withdraw mine.

The Chairman — Leave is asked for the withdrawal of Amendment No. 5, introduced by Mr. Quigg. If there is no objection

that will be the order. I hear no objection, and Amendment No. 5 is withdrawn. Amendment No. 6, introduced by Mr. Cobb. The Secretary will please read.

The Secretary — By Mr. Cobb: Page 2, line 24, after the word "comparison" insert in italics the following: "together with all reports, opinions, evidence and estimates which the Governor shall have received relative to the preparation of the budget".

The Chairman — Those who are in favor of the amendment will say Aye, opposed No. It is lost. Amendment No. 7, introduced by Mr. Brackett.

Mr. Brackett — Withdrawn.

The Chairman — If there is no objection, at the request of the introducer, Mr. Brackett, Amendment No. 7 will be withdrawn. The Chair hears no objection and the amendment is withdrawn. Amendment No. 8, second part of the amendment, the first part having been withdrawn. The Clerk will read.

The Secretary — By Mr. A. E. Smith: Page 4, at the top of the page, insert the following: "Section twenty of article three of the Constitution is hereby amended to read as follows: Section 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or for State purposes when less than the whole of the State is to be directly or mainly benefited by the expenditure of the moneys appropriated except appropriations for the repair and maintenance of the canals or the support or construction of State institutions."

The Chairman — A rising vote has been called for. Those who are in favor of the amendment will rise. The gentlemen will be seated. Those opposed will rise. The gentlemen will be seated.

The Secretary — Ayes 49; Noes 87.

The Chairman — The amendment is lost. We will now vote on amendment No. 9, by Mr. Wagner. The Clerk will read.

The Secretary — By Mr. Wagner: Page 3, line 6, after the word "by" insert the words "at least one-third of the elected members of".

The Chairman — A rising vote is called for. Those in favor of this amendment will rise. The gentlemen may be seated. Those opposed will rise. The gentlemen may be seated. The amendment is lost. The next amendment to be voted on is No. 12, by Mr. Olcott. The Clerk will read.

The Secretary — By Mr. Olcott: Page 3, line 5, strike out the words, "their duty" and insert in place thereof "the duty of such heads of departments and the Comptroller." Page 3,

line 6, after the word "by" insert "at least one-third of the elected members of".

The Chairman — Those who are in favor of this amendment will signify by saying Aye, those opposed No. It is lost. The amendment No. 13, by Mr. Leggett, will now be voted upon.

The Secretary — By Mr. Leggett: Page 3, line 9, after the word "law" insert the words "all appropriation bills must be submitted by the Governor". Page 3, strike out lines 17 to 21 inclusive, and line 22 down to and including the word "four".

The Chairman — Those in favor of this amendment will say Aye, those opposed No. It is lost. Next, amendment No. 14, by Mr. Nicoll. The Secretary will read.

The Secretary — Page 3, line 21, insert the following after the word "shall": "require the assent of two-thirds of the members elected to each branch of the Legislature and shall".

The Chairman — A rising vote has been called for. Those in favor of this amendment will rise. The gentlemen may be seated. Those who are opposed will rise. The count being unnecessary, the amendment is lost. The question is now upon the adoption of the amendment proposed by the Committee, which appears on General Orders, No. 46, as amended.

The Chairman — A rising vote has been called for. Those in favor of the adoption of the Proposed Amendment as amended, will rise. The gentlemen will take their seats. Those opposed will rise. The amendment, as amended, is adopted.

The Clerk will continue the call of the calendar.

Mr. Stimson — Mr. Chairman, I move that the Committee do now rise and report the amendment favorably to the Convention.

Mr. Wickersham — Mr. Chairman, a point of order. The Committee has still other business.

Mr. Stimson — Then I move that when the Committee does rise it report the amendment favorably to the Convention.

Mr. Wagner — Mr. Chairman, I suggest that the Committee has already decided that question.

The Chairman — The Chair assumed that that was the action taken by the Committee. The Clerk will call the calendar.

The Secretary — No. 780, General Order No. 48, by the Committee on Suffrage.

Mr. J. G. Saxe — The amendment is moved, Mr. Chairman.

The Chairman — The Clerk will read the amendment in its present form.

Mr. Westwood — Do I understand that the Committee is now considering the Proposed Constitutional Amendment reported by the Committee on Suffrage?

The Chairman — That is the order. General Order No. 48.

Mr. Westwood — I desire to propose an amendment which I send to the desk.

The Chairman — The Clerk will read the Proposed Amendment.

The Secretary — By Mr. Westwood: Page 2, line 1, strike out the first bracket and insert it before the word "voter". Strike out the balance of line 1, and all of lines 2 to 7, inclusive. Page 2, line 10, strike out the word "such" and all four brackets.

The Chairman — The gentlemen will please observe order, because it is impossible for the delegates in the rear part of the chamber to hear.

Mr. Westwood — Mr. Chairman, because the members of the Committee may not have followed the reading by the Clerk, allow me to state the object of this amendment. It is to strike out all of the new matter on page 2, allowing the word "electors", however, to be inserted in the section in place of the word "voters". In other words, it is a proposition to defeat the Proposed Enactment permitting the Legislature to provide for absentee registration. This matter was under consideration last Monday night, as members of the Committee will recall, and there were those in the Committee at that time who saw certain dangers lurking in this proposal, dangers to the established practice of personal registration. I tried to point out on that night that if the Legislature enacted laws permissible under the provisions of this Constitutional Proposal the entire scheme of personal registration could be cut down. I want to point out to the members of the Committee again, in just a moment, in a little different way, my view of it. If a voter may make an affidavit of intention which complies with the laws that may be enacted he will be entitled to register. His affidavit or his oral testimony will of course deal with the future. It will deal with his intention; it will deal with his plans in relation to the question of his presence or absence on registration day. It may deal with what has been his custom of business, but that is, of course, merely an incident to the main fact, which is his intention for the future. The principle of personal registration is not and will not be safe if under this or a similar enactment the Legislature may pass laws under which convictions or false affidavits or testimony of that sort may not be had; or, in other words, unless a punishment follows an incorrect or improper affidavit or testimony of that sort, voters, political organizations, will be free to make use of this affidavit form of registration and the custom of personal registration will easily be supplanted with the custom of "affidavit registration." I have since last Monday devoted such time as I could to examining, across the street in the law library, to find whether or not

there are any adjudicated cases reported in the law reports of the United States of America or in any of its States, in which a defendant charged with perjury was convicted where the charge related to his false statement of a future event, of his own intent, and I have been unable to find any. There must be in this body at least fifty men who have served as district attorneys in their respective counties and I venture to say that there is not a single man in the room who can recall a case in which a man has ever been convicted of perjury for a false statement of his intention. If any such case is known by any member of this Committee, I would like him to get up and tell about it now. If, then, no punishment can be meted out for the improper use of this method of registration by affidavit, its proper use cannot be enforced, it will not be enforced, and that method will supplant our present method.

Mr. Steinbrink — Has the gentleman examined the absentee registration laws in those States where it now is in force and has been in force for some years?

Mr. Westwood — No, I have not, Mr. Steinbrink. If members of the committee believe that the time has come when we should no longer be protected by the practice of personal registration, then upon this proposition here I have nothing more to say. But a very distinguished Governor of this State, Governor Flower, said in one of his messages to the Legislature, that "The requirement of personal, annual registration as a necessary preliminary to the exercise of the suffrage has been a most effective influence in diminishing fraudulent voting." It all comes, of course, to the voting proposition. No matter how fraudulent your registration may be, still, if there is no fraud in the voting, the polls still remain pure. The State existed fifty years before any legislative body, in the State, determined upon any sort of poll list. The Constitution of 1821 directed the Legislature to provide a proper provision by which polling lists might be made. The Legislature did nothing for twenty years and then provided for registration, but not for personal registration until the year 1872 — the State a hundred years old, fifty years after the Constitution of 1821! For 42 years we have had in cities, and for twenty years in villages of over 5,000 inhabitants, personal registration. The members of the Committee will agree with me that there is no correct sentiment in the State which they can lay hold of and find expression here, to do away with personal registration. When this proposition was called to my attention the other night, as we started to discuss it, the thought occurred to me, why does not somebody do directly what it seemed to me then, this bill claimed to do indirectly. The thought had hardly formed in my mind

when Mr. A. E. Smith of New York rose and proposed his amendment to this Proposed Constitutional Amendment, that the whole subject of registration, personal and otherwise, be left to the Legislature. I could not help but think then, as I think now, that Mr. Smith's proposal would be the direct outcome of the adoption of this or any other similar proposition. I am sure the members of this Committee feel the exceeding great importance to the State, to the purity of the ballot, that should be accredited to any proposition of this kind, and I am sure that a majority of them will feel that it is altogether too dangerous in its present or any other conceivable form—too dangerous a proposition to receive approval in this body.

Mr. Burkan — I hope that the amendment of Mr. Westwood will not prevail. His objection to this amendment is that it might open the doors to fraud. He said the other night that there would be an abundant opportunity to those who would seek to avail themselves of the elective franchise to take advantage of this provision proposed by the Committee on Suffrage and gross frauds would be perpetrated. It might be argued with the same force that because it appeared that certain passports were issued by the Department of State and frauds were committed through the use of those passports, passports ought to be abolished. Well, instead of following out the suggestion of Mr. Westwood, the department simply prescribed certain regulations which would protect the use of passports. What are the department regulations? An affidavit is submitted by the applicant for the passport containing a description, which is thorough in every way, of the applicant: His business, date and place of birth, date of citizenship, nationality, date of issuance of naturalization papers, if foreign born, and all other requirements, in order to make sure that the applicant is entitled to the passport. In addition thereto, he signs his name to the application, to be used as an identification, and attaches thereto his photograph, so that there can be a complete identification when he presents the passport to the proper authorities to be viséd. Now, why cannot the same procedure be followed out here? Why cannot the Legislature provide certain regulations to make sure that the applicant is entitled to vote? As Mr. Westwood says, it is not a question of false registration, but, after all is said and done, it is purely a question of illegal voting, a question of whether the man is entitled to vote or not. The purpose of registration is a formality required to prevent persons from voting who are not entitled to vote. Now I know there is a pressing demand for this amendment. In 1894, when this question came before this Convention, theatrical companies touring through the country were not as

numerous, there were not as many people interested in the business, and consequently there were not so many citizens affected by this requirement for personal registration. I had Mr. Ligon Johnson, who is the representative of the United Managers' Protective Association, make up for me a statement of the number of persons who are necessarily absent from the State on registration days, and he submits these figures. He says that every season there are from three hundred to four hundred theatrical troupes traveling through the country and the average personnel of each company comprises thirty persons, totaling about twelve thousand people. He says that the White Rats Society estimates that their total membership on tour after the season opens will average between eight and ten thousand. Now here are from eight to ten thousand citizens of the State traveling through the country, a great proportion of whom will be unable to be present on registration day. He says the stage hands, members of the International Alliance of Theatrical Stage Employees, have a traveling membership of 3,800. The American Federation of Musicians estimate their traveling membership at about 3,500 in addition to theatrical musicians who are also on tour with carnivals, fairs, Chautauquas, Redpath Lyceums and the like. In addition to this there are advance agents who are ahead of each attraction. I think I am very conservative when I say that over 25,000 people are engaged in this business, whose occupation requires them to travel and who are necessarily absent from the State on registration days. During the past few years an entirely new industry has come into being. The moving picture industry. Hundreds of people are engaged in making these pictures; camera men, stage directors, directors and artists. The pictures are taken in California, in the south, and other places; people are traveling to and fro in the pursuit of their calling. Why should these 25,000 people be deprived of the right of suffrage because they are not here on registration day? The reason the present Constitution provides that in villages and cities of less than 5,000 inhabitants that no personal registration is required is because it would be a hardship to compel people living in remote parts of the State to travel many miles to the place of registration. Now, it is just as much hardship upon these 25,000 people who travel throughout the country, who are taxpayers, who are good citizens, to leave their occupations and make special trips to attend to the registration. Now, it is not a fair answer to say it might open the door for fraud; it might afford opportunities for those who commit crimes, who are naturally inclined toward committing crime, to commit a crime against the suffrage statutes, and, therefore, as a

consequence, 25,000 people whom I have described should be disfranchised. It would be a sad commentary upon the ability of the Legislature, if the members of the Legislature could not devise laws to protect those who are entitled to be registered and to vote as against those who are not entitled to register, to prevent fraud and deception.

It was suggested that a system of thumb prints, photographs and other identification marks be provided for in the regulations to be formulated by the Legislature to insure bona fide absentee registration. I am quite confident that right in this body five men could be selected who could, if necessary, prepare such rules and regulations for the safe-guarding of this right. It is no answer, I submit, Mr. Chairman and gentlemen of this Committee, to say that because there might be some opportunity for fraud, or that some individual might commit fraud, that thousands of our citizens should be disfranchised. There are ways of protecting the ballot; there are ways of compelling these people to make affidavit and furnish absolute identification. Ample opportunity can be afforded to the registry officers to verify the truth of the application. If the applications or affidavits are false the men who make the affidavits can be punished. My friend argues that a man might make an affidavit certifying as to all the requirements, but that he might make a misstatement in respect to his intended presence on the day of registration. Well, what difference does that make? Suppose a man did state that he intended to be absent on registration day and in fact was present. So long as he shows by his application that he is a citizen and that he possesses all the necessary qualifications — even if he is present in the county on registration day and did not carry out his intent to be absent, he certainly ought not to be disfranchised.

Mr. Chairman, I hope the amendment will go through.

Mr. Law — I am obliged to oppose the amendment as printed. The first amendment as printed and as presented by the Committee, proposes that in this Constitution certain vocations or certain classes of citizens should be selected and given special privilege with regard to the franchise. The present provision provides that that power shall be transferred to the Legislature; that it may be empowered to select certain classes of citizens and give them special privilege with regard to the franchise. That I believe to be entirely wrong in principle, and I further believe that it will work out very badly in practice. But, I do see that there are conditions which ought to be remedied and for that purpose let us consider for a moment the purpose of registration. It is simply that the voter shall make a claim of a right to vote in the particular district and that that claim shall be so registered

that the election officers or whoever is interested in the question may examine the truth of that claim and prevent fraud. Therefore, in carrying out the idea I have so briefly stated, I respectfully offer the following amendments.

The Chairman — The Clerk will read the proposed amendment.

The Secretary — By Mr. Law, amend by striking out, page 2, line 1, all of the amendment beginning with the word "only" and ending on line 7 with the word "require", and inserting in place of the matter thus stricken out: "or by affidavit filed with the registration board, and the Legislature shall prescribe the form, the essential provisions and the manner of filing of an affidavit which shall entitle an elector to be registered."

Mr. Law — I will simply say in regard to the amendment that it provides that the Legislature may provide for registration by affidavit and that the affidavit shall contain all the necessary information by which the registration board, or any one interested, can verify the truth of the claim and determine whether or not the person desiring to be registered is entitled to do so.

Mr. Westwood — Under the plan proposed by your amendment, Mr. Law, every elector of the State would, pursuant to constitutional provisions, have the right either to register personally or by affidavit, as the elector may see fit.

Mr. Law — Yes, my idea being that the form and contents of the affidavit and the manner of filing the affidavit should be sufficient protection against the perpetration of fraud.

Mr. Barnes — An interesting question arises in connection with this proposal. Mr. Law has referred to this proposition as granting a privilege in the Constitution. Of course, the Constitution grants several privileges, and it is the function of the people to grant privileges if they desire, which will be a part of the amendment which will be a special order to-morrow which the Committee on Legislative Powers has introduced. But I cannot see how the mind can conceive that this proposal is in any sense a privilege. Voting is a privilege which each citizen who is over twenty-one years of age and who has a certain residence, possesses; but to provide how that citizen may vote is the function of registration for the purpose of preventing fraud. We, therefore, have, as the gentleman from New York says, in the Constitution, a clear-cut expression that those who are compelled to travel a large distance are not compelled personally to register, which does not grant to them any privileges but which places them on the same equality with the citizen in the city. Therefore, those who, through occupation, are away from the place where they vote are naturally entitled to the same equality in registration that is granted to the residents of the country districts, provided that

such proposal can be made without the introduction of fraud. Therefore, it would seem that if this proposal were passed, the Legislature might very properly pass such law as would make the condition equal. The evil of which Mr. Westwood spoke, the evil of intention — punishment would lie against his false affidavit, as to whether the person was a voter. If he declared in his affidavit that he was a voter and it proved it was not true, he certainly could be prosecuted and convicted, and therefore it seems to me that that contention falls to the ground. The only object of this proposal is to produce equality in registration in order that equality in voting may be more real. I do not know whether the suggestion made by the gentleman from Washington, Mr. Law, is not more to the point than the one which has been introduced by the Committee, because then the Legislature would doubtless take particular care to prevent the evil that would result from false registration. As it comes upon the first day, which is fully a month before election, and is open to investigation, it could clearly be shown as to whether these men were voters or whether they were not, and granting the original premise, that the object of this amendment is to produce equality, that is the only question at issue as to whether they are voters or not.

Mr. Wickersham — Mr. Chairman, without attempting to follow the gentleman from Albany through the various subtleties of distinction between special privileges and general privileges, it has seemed to me that this is a very practical question which we have before us. The purpose of registration laws, I take it, is to prevent fraud at elections. In our crowded city communities, the opportunity for one person to impersonate another is very great, and experience has gradually evolved a body of laws quite complicated in certain features, quite simple in others, to make it perfectly sure that John Smith who votes on a certain day is the same John Smith who lives in a given place in the district and possesses the qualifications required by the election law to entitle him to vote there at that time. Now, the vigilance of citizens, of the citizens composing the respective parties, is directed to scanning and scrutinizing the registration lists as they are made up, and they are required to be made up a sufficient time before election day to give those interested time to examine these lists and make sure that no names are fraudulently or improperly upon them. The simplest and most direct method, of course, of getting a name on that list, is for the elector to go himself in person and give his name, and answer the various inquiries and possibly sign his name. Now, the question arises whether or not there is any considerable body of electors whose occupation is of such a character as to render it difficult or practically impossible for them

to go personally and register in this way, and, if there is any such body of people, then it is important to make provision in the law for their registration in some other way which will be equally effective. In time of war provision is made in the Constitution for the exigencies of war requiring the absence of the elector; provision is made not only for his registration but for his voting away from his domicile. No such provision is attempted here, but assuming the fact to be as stated by a number of speakers, and as the Committee on Suffrage has found, that there is a large number of people who cannot ordinarily attend during the registration period, but who can come back to vote, if there is any safe method of providing for their registration, it seems to me a proper exercise of power to open the door for registration to meet their case. Now, there is a very large number of people said to be within this class. Take the commercial travelers. They are a most intelligent body of the community. They are people whose occupation carries them about from one place to another. They have opportunity to exchange their views and opinions. They become more broadminded than people who live in one rut—a desirable class of people to introduce to the exercise of the duties of citizenship if it can be safely done.

When this proposal was before this Convention some weeks ago, it opened so many questions of doubt that I felt, in common with many others, that it was hardly expedient to enact it in that form. The amendment has been very carefully redrawn. If you are going to pass any amendment on the subject, I don't see how it can very well be improved. It is limited in such a way that registration must be on the first day of registration, if at all; so that that man whose habitual occupation is such that he cannot rely on attending personally, may, on that day and on no other day, file whatever the Legislature may require to establish his right to vote. Now, I can conceive that that might be really a better means of identification than attendance at the polling place and answering in a perfunctory way the questions put by the registration officers, then signing his name, because if the requisite form is made full enough, and signature is required, it will be easier to verify the reasons, the statements made before than those required ordinarily of the elector when he registers. His photograph may be required; his thumb-print might be required—there is some suggestion that there is an invidious idea connected with criminology in the taking of the thumb-print; but that is merely an idea; there is no reason why the thumb-print should not be used as a means of identification on checks and

notes, as well as for purposes of criminal identification. But these are details which the Legislature may, in considering the question, take into account, and which may be the basis of conclusions reached by it. On the whole, it seems to me that there is a very large class of people who, under existing conditions, are not able to exercise the right of suffrage, who have a right to do so, and it seems to me that it ought to be possible for the Legislature within the provisions of this measure to enact regulations which would safeguard against fraud and at the same time would make it possible for those electors to register and then exercise their rights of suffrage. For that reason, I am willing to vote for this provision as printed in the report without any of the amendments. Mr. Chairman, before I take my seat, the hour of five-thirty is approaching, which is the limit of time for sitting here, and in order that the chairman of one of the important committees may present his report to the Convention and have it printed this evening, I move that the Committee do now rise, report progress, and ask leave to sit again.

Mr. Deyo — Mr. Chairman, I offer the following amendment and ask that it be printed — deemed read and printed.

Mr. Olcott — Mr. Chairman, I ask that my amendment be read. I think it will be accepted by the proposer.

The Chairman — Before final action in this matter — under the rule we have one hour to give to this measure. Forty minutes have already expired, and it is quite desirable, in view of other matters on the Calendar, that this should be, and it is barely possible that it may be, disposed of before adjournment.

Mr. Wickersham — My purpose, Mr. Chairman, was to rise for the purpose of enabling this report to be handed in.

Mr. J. G. Saxe — Mr. Chairman, my suggestion was that we were operating under a special order and special rule of one hour's debate, and in view of the fact that forty minutes have already elapsed, it seems to me we ought to come to a vote and finish it up before 6 o'clock.

Mr. Westwood — Mr. Chairman, that would be my suggestion. It will all be finished before a quarter to six.

Mr. Parsons — Mr. Chairman, at the time this debate started, it was evident that the hour would not be up at half-past five, and several members spoke to me, and did not remain, on the understanding that the vote could not be taken until this evening.

Mr. Westwood — Well, under those circumstances, I think it fair to let the matter lie over.

Mr. Wickersham — Well, Mr. Chairman, I renew my motion that the Committee do now rise, report progress, and ask leave to sit again at eight-thirty.

Mr. Saxe — Before putting that, will the Chair please make a ruling as to how much time is left for debate?

The Chairman — Twenty minutes.

The motion is to rise, report progress and ask leave to sit again at eight-thirty for the completion of this or such other business as may come before the Committee. Those in favor of the motion will say Aye, contrary No. It is carried.

(President Root resumes the chair.)

The President — The Convention will come to order.

Mr. Marshall — The Committee of the Whole has acted upon General Order No. 46, printed 778, introductory No. 709, and after having duly considered the Proposed Amendment, it reports in favor of the passage of that amendment with amendment, with the report as now presented.

The President — All in favor of the report will say Aye, contrary No. It is agreed to and the amendment is advanced to the order of third reading.

Mr. Marshall — Mr. President, the Committee of the Whole further reports that it has had under consideration General Order 48, print 780, introductory 711; that it has made progress in the consideration of this measure, and it asks leave to sit again at 8:30 o'clock on this special order.

The President — The question is on granting leave to the Committee to sit again at 8:30, in further consideration of this matter. Those in favor will say Aye, opposed No. Permission is granted.

Mr. Tanner — Mr. President, I ask unanimous consent, out of order, to present a report, a proposed article, from the Committee on Governor and Other State Officers, and in order that the report itself may be before the Convention, I move that it be printed as a document.

The President — That motion is not necessary. It would be printed under the rule. Is there objection to receiving the report out of order? The Chair hears none, and the report is received.

Mr. Cullinan — Mr. President, I was going to call attention to the minority reports.

The President — Minority reports are in order.

Mr. Cullinan — Mr. President, I am a member of the Committee on Governor and Other State Officers, and to-day for the first time I have seen the report of the Committee, which purports to be and probably is the work of a majority of the committee. I desire to state that there are, I think, seven or eight of the members of the committee who intend to file minority reports and, not having had time to prepare a minority report as to my own views, and perhaps there are others, I desire time to submit a minority report and give my reasons therefor and desire to speak

for those members of the committee who intend to file minority reports and who are absent and have left the chamber.

Mr. C. Nicoll — Mr. President, I ask leave to file the following minority report.

The Committee — The Secretary will read the report from the Committee.

The Secretary — Mr. Tanner, for the Committee on Governor and Other State Officers, to which was referred proposed amendment, introductory No. 85, print No. 85, by Mr. E. N. Smith, reports by proposed constitutional amendment entitled: Proposed Constitutional Amendment, repealing sections 1, 2, 3, 4, 6 and 7 of Article V, and creating a new Article V in relation to State Officers.

The Secretary — Second reading. Repealing sections 1, 2, 3, 4, 6 and 7 of Article V and creating a new Article V in relation to State Officers.

The President — Is there any special disposition of this bill to be moved? Referred to the Committee of the Whole. Is there any further business to come before the Convention?

Mr. Wagner — Mr. President, in behalf of Mr. Arthur J. Baldwin, a member of this committee, I desire the privilege of filing a minority report. It being only a page, I ask that it be read.

Mr. Wickersham — Mr. President, as none of the other reports have been read, I ask that it be considered as read and printed.

Mr. Wagner — Mr. President, it is less than a page, less than a page of typewriting.

Mr. Wickersham — None of the others have been read and I move that it be considered as read and printed.

Mr. Wagner — Then I shall object to the receipt of the whole report.

The President — The Committee's report is in and nailed down.

Mr. Wagner — Does Mr. Barnes desire to speak in behalf of the privilege I am asking?

Mr. Barnes — No, sir; I am against it.

Mr. President, the next order of business in special order reported from the Committee on Rules is No. 25, from the Committee on Legislative Powers and Limitations; we also have not finished with the taxation article which follows it, also in special order. I have talked with Mr. Saxe, the Chairman of the Committee on Taxation, and he was willing to go on this evening, reversing the order which is now the rule of the Convention. Therefore, I move that these two bills exchange places on special order.

The President — All in favor of the motion will say Aye, contrary No. It is agreed to.

Mr. Westwood — Mr. President, may I inquire what the motion is?

The President — It is an exchange of places arranged between the gentlemen responsible for two numbers in General Orders.

Mr. Quigg — Mr. President, I am compelled to ask the Convention to excuse me from attendance to-morrow.

The President — All in favor of granting the excuse will say Aye, contrary No. It is agreed to.

Mr. Bayes — As a member of the Committee on Governor and Other State Officers, Mr. President, I wish to say that I am in accord with the general plan and purpose of the Committee report. I am unable, however, to assent to the proposed article in toto, and accordingly I desire to reserve the right to dissent as to certain sections, and I request that I may be permitted, if I desire to do so later, to file a memorandum in support of these objections.

The President — Without objection that privilege will be granted.

The President — The Convention will now stand at recess until eight-thirty this evening.

Whereupon at 5:40 p. m., the Convention took a recess until 8:30 p. m. of the same day.

AFTER RECESS — 8:30 P. M.

The President — The Convention will come to order.

Mr. J. L. O'Brian — The special rule affecting the special order now under consideration in the Committee of the Whole limits the debate to one hour. Of that hour only 20 minutes are left and six members of this House have spoken to me informally, and expressed a desire to have opportunity to speak very briefly on this measure. As the measure is one of considerable importance I think a reasonable extension of that time should be granted and I therefore move that when the Committee of the Whole resumes consideration of the pending special order the speeches be limited to not to exceed ten minutes each and the final vote be taken thereon at nine-thirty this evening.

The President — The question is on the motion.

Mr. Griffin — Mr. President, we have on for consideration to-night an amendment that is perhaps the most important of any that we have so far considered in this Convention, or, for that matter, of any that we may hereafter consider, and I cannot see the necessity for a rule which will limit the discussion on, say, the question of taxation, which is the special order for to-night to speeches of ten minutes each.

Mr. J. L. O'Brian — Mr. President, I am not speaking of that. The pending question — if you were here when we adjourned — the pending question was on absentee voting and registration. I am not referring to taxation, and there is no special rule in existence as to its consideration or discussion. It was on this other matter.

The President — All in favor of the motion will say Aye, contrary, No. The motion is agreed to. The Convention will go again into Committee of the Whole for consideration of the special order on absentee voting. (Mr. Marshall will resume the chair.)

The Chairman — The Committee will resume consideration of General Order No. 48.

Mr. Leggett — For a great many years the State of New York struggled towards personal registration of voters in the cities of the State and in the larger villages. The Convention of 1894 was not satisfied to leave that question to regulation by the Legislature but embodied it in the Constitution, so that the Legislature could not take away that safeguard from a proper use of the ballot. This proposition undertakes to open the door — I may say that it does not open the door very wide, but it opens the door — and the inquiry arises, for what purpose and for what class of persons is the door opened? As this amendment was originally introduced, it seemed to be for the benefit of commercial travelers. Now commercial travelers are a very useful, a very intelligent set of voters. Their suffrage is perhaps as valuable as any other class. It has been my privilege to be acquainted with a good many of those commercial travelers; some of them are my very good friends. So far as my little knowledge goes, the bulk of them get home either every Saturday night or every other Saturday night, and if I remember correctly the laws provide for registration on Saturdays. So that it is not, for the bulk of them, such a very great hardship to return home for the purpose of registration a few hours earlier. The question arises again, from the standpoint of the State itself, what difference would it make in any election whether these gentlemen get a chance to register and vote or not? I imagine that it would be difficult for any man to say whether they all voted or did not all vote, that it would affect the result of any election. Of course, they themselves cherish the right of suffrage. Now, when this proposition was reprinted it took away from itself a little of the reproach of being devised for the benefit of one class, and it has been urged to us here to-day that it will be for the benefit of those who engage as actors, those who are in various ways connected with theatrical employment and who are necessarily away from home; and quite a considerable number of people are said to be engaged in that

calling. But, it has nowhere been stated how many of that number are voters in the State of New York, or even citizens of the State of New York. It is not apparent to me why this should be restricted to a certain class of people, who, as the amendments specify, are to be designated and defined by the Legislature. Why should not it apply to people of all classes who happen to be inconveniently away from home on days of registration? I find no answer to that as yet. Now, the principle on which personal registration was required was to insure purity of the ballot. It was to insure that only people qualified to vote should register, and only the people who register should vote. I suppose the advocates of this measure will say to us that that will all be provided for safely. Now the question arises, if that can be provided for safely for men who are absent from home, who are in some distant county of the State, or in any distant State where it is inconvenient for them to return home to register, why can't that same privilege be extended to people who for any reason might want to use it who are in the county? If it is safe, safe with the man who is in Nebraska, if it is safe with the man who is absent in the next county, it is safe for the man who is staying at home in his own election district. And safety is the object of registration. Why shouldn't this be open wide so that it will apply to the people who stay at home as well as those who are away? And if that is the case, and it certainly is the case, that it is for safety's sake, I want to repeat it is just as safe for the man that is staying at home as for the man who is over in the next county. And there you have an illustration of what this means. If you open the door to those people, you might just as well open the door for everybody on the first day of registration. And are we prepared to open the door that wide?

Mr. Wiggins — Mr. Chairman, the Election Laws are designed, as I understand them, for the purpose of protecting the electorate, and to prevent any fraudulent practices. They are not designed for the purpose of disfranchising voters. They are only designed for the purpose of casting about elections the necessary safe-guard in order that the votes of those who have properly registered may not be lost by some dishonest method which may be adopted by those who desire to debauch elections. Now the Election Law as it exists, as shown by the figures of Mr. Steinbrink, who has given this matter very thorough and consistent study, those figures show that a large number of men are disfranchised because of the fact that their occupation necessarily compels them to be absent from their election districts for some considerable period of time during which the other voters of the State are being placed on the election roll. Now I think that is unfair. When I

heard Mr. Westwood to-day, I only heard him partially, but the gist of his remarks as I understood them was that he was afraid that some fraud would be committed and in his timidity he arose for the purpose of protecting those voters who had the time and the money to come from their far-distant occupations and place themselves upon the registration lists. Well, I say to Mr. Westwood, that he and I belong to that party which wrote into the Constitution those words which now exist there and I stand for those words as they now are expressed in the Constitution. But a man who has any timidity over the future, and what this provision is now proposing to incorporate in the Constitution, must go back to the Constitution and read there those words which say that in villages of less than five thousand nobody shall be required on the first day of registration to come down and put his name on the list. I believe in that. But when a man begins to make an utterance in this hall which says he is afraid, fearful of what the future may have in store for the electorate of this State, I say that he must do one of two things, either vote to change the Constitution as it now stands or be convinced by those words that are contained in the Constitution that you may register on one day without even an affidavit. They were designed for a useful purpose. That purpose was that men in the country who were unable to come to the registration districts, traveling a distance of eight or ten miles — not riding in automobiles, as Mr. Smith says, as the men in New York city or other places can do, or get on the electric car line for five cents and go to the registration booth — it was not designed for that, it was designed for the purpose of helping those persons who were unable to go such long distances. Up in the country district where I came from we have to go a distance of eight or ten miles to register. If a man happens to be a workingman or a farmer or day laborer he has got to get a ride from somebody or walk that distance. It is a great hardship to expect men to do that and that is the reason that provision was placed in the Constitution so that we shall not disfranchise those men, and now we are placing in the Constitution, if this provision is voted, a provision which shall not disfranchise those thousands of men in the State of New York who cannot cast their vote on election day because of their inability to return home. If I needed any argument to convince me that this was a good measure all I should need to do would be to read the words of our distinguished leaders, Mr. Barnes and Mr. Wickersham, both of whom say to us that it is safe, that it is proper, and that it meets the ends of justice.

Mr. J. L. O'Brien — I dislike to find myself in disagreement on a question of this importance with the distinguished chairman of the judiciary. When this proposition was first brought before

this House it appealed to me very strongly. I felt that it was unfair to disfranchise commercial travelers or other particular classes of men in the community who were by the nature of their employment taken away from the State on registration day. But the very difficulty that this House has encountered in trying to define in this long series of amendments the classes to whom this law should apply, has convinced me that it is a very dangerous proposition and that it should not be adopted by this Convention. The history of the present ballot laws of this State is the history of long consistent effort on the part of its best citizens sticking to it year after year, year after year to get a law evolved which would give us honest elections and to-day we see the result of the present registration laws in this State and the present laws covering conduct on election day. Now this proposition will place it entirely in the hands of the Legislature to define vocations or occupations, the members of which shall not be required to appear personally, but who shall make some proof,—whether drastic proof or whether it be slight proof, it will be for the Legislature to say. And we ought to remember that this question is a question which the Legislature will always handle from a partisan viewpoint. We ought to remember also that the danger that is involved in this proposition is not the danger of fraudulent registration. The danger is the danger of impersonation upon election day, and, to my mind, in the large cities that is a very serious danger. We have now listened to this debate on two different days and we have yet to hear any definite statistics as to exactly how many people will be benefited by it. We have been told that there are so many actors in the State of New York, that there are so many commercial travelers in the State of New York. But just how insistent is this demand under which we are asked to open the door and set aside the very definite matter of principle in this State governing the registration of voters? Now in democracies, gentlemen, every day a few are inconvenienced for the convenience of the many. Every day the rule of the greatest good for the greatest number must govern. It is perhaps unjust that there are certain classes in the community who, by reason of their employment, are taken out of the city on registration days, but, gentlemen, there are other men on every election day who by reason of the same fault or by reason of the same accident are prevented from casting their votes on election day. Are we therefore to have voting by mail? Just consider, when the Legislature undertakes to open this field, the pressure that will be brought to bear upon it. First the commercial travelers, then the railway officials; then the Federal officials who live outside of the State, who live in Washington; then the actors, then some one suggested the other night the

men who own the scenery; then, what next? Why, after we have them all registered by mail, why not permit them to vote by mail? Is not one proposition just as fair as the other? Now, gentlemen, I did not intend to speak on this subject, but I feel that the measure is one which carries in it a grave danger. It is opening the door and placing it in the power of the Legislature to define such vocations or occupations as it chooses. It is a reversal of policy, and the gain which would be obtained from it is not commensurate with the danger which it embraces. Too many years we have labored in this State to bring about honest elections to have any measure of this kind come in now seeking to confer a special privilege on a certain class of voters which might, conceivably — nay, probably would — be a serious danger to the continuance of that policy. I hope that Mr. Westwood's amendment will be adopted.

Mr. Low — Mr. Chairman, I cast my first ballot in the city of Brooklyn in 1871. On that day at the polling place directly across the street, five hundred ballots were put in the ballot-box before the voting began. As a result of that incident, and others not very different from it, the first Registration Law of the city of Brooklyn, and I think the first Registration Law in the State, was passed the following year, 1872. Ever since that time we have been striving to improve the system of personal registration in the large cities so as to make elections reasonably fair. I confess that I have listened to this suggestion with a great sense of fear. It may be unreasonable, but it is the result of a lifetime spent in the consideration of the questions involved, as I think, in this proposed amendment. When it was suggested that special classes might be exempted from the necessity of personal registration, there was a certain appearance of justice about the situation. Yet I feel that even in that form we should have come in contact — we would come in contact with the quality in human nature which is illustrated by an anecdote I heard of a little boy not long ago. He was asked how old he was. He said that with his parents on the train he was four, at school he was six, at home he was five. And I think there might be a great many commercial travelers, a great many actors, a great many railroad men, for the purposes of absentee registration, who would know nothing whatever of those occupations on any other day of the year. I feel, as Mr. O'Brian has expressed himself, that every argument that there is in favor of absentee registration can be made just as strongly for absentee voting. It seems to me, sir, that this suggestion opens the door for such changes in our registration laws as they affect the cities of the State as would be fatal. The wound may not be as wide as a church door, nor as deep as a well, but it would be

enough. My instinct is against it; my judgment is against it. If it is adopted, in my belief the time is measurably near when all the efforts of all these years to obtain fair elections in the centers of population will prove to have been made in vain.

Mr. Deyo — I certainly would not advocate the passage of any measure that I believed would tend in any way to let down the bars with respect to illegal voting. I don't think that danger need be apprehended if the amendments which I am about to propose are adopted. It is a fact, Mr. Chairman, and gentlemen of the committee, that there are in all of our cities a great many voters who are traveling men. Those are the ones in whom I am particularly interested. I know more traveling men than I do actors. I have never had the experience in politics which Delegate Low has so graphically described. Now, these traveling men are frequently away in different states of the Union in the pursuit of their business. Traveling men, as a rule, are very anxious to exercise the privilege of franchise; whether they vote the Democratic ticket, or the Republican ticket, or the Progressive ticket, or any other ticket. They are very anxious to be around on election day. That is universally the case, I believe, with commercial travelers. We have provided, or this Convention will provide that the last day of registration shall be pushed back to fifteen days at least before election day, and that means that these traveling men will be compelled to come home to register and then remain home, perhaps, two weeks, in order to vote. The suggestion which I have to offer is this: In the first place, I would limit this privilege of registering without personal application to those electors entitled to vote in such district and who voted therein at the last preceding annual election. Now, that identifies him. If a man voted in his election district last year then he may, to comply with the provisions of law, be permitted to register without personal attendance, at the next election. I am not in favor of the provision in the pending bill, in line 5, included in the words, "to be designated and defined." It seems to me that that, as has been suggested, would throw the door open to definitions, to bills in the Legislature to exclude or include this and that and the other class of people. I do not know as it makes any difference what the man's occupation is. If his business is such, if his necessary duties are such outside of the county in the pursuit of his regular vocation or occupation as will occasion his absence at the time of the registration, it seems to me he ought to be brought within the provisions of this act. There is also another class of people who should be included, and that is the student who is away at college. By eliminating these words which I have mentioned, the bill becomes broad enough to include these people.

There is one other provision which I think should be expressly provided for.

Mr. J. G. Saxe — Did the gentleman say he has some new language to bring the college student in, or is he going to accept my amendment?

Mr. Deyo — I will get the college student in by simply using the expression "whose necessary duties outside of the county in the pursuit of a regular vocation or occupation", and I will leave out the words "to be designated and defined".

Mr. J. G. Saxe — Then you are going to accept my first amendment?

Mr. Deyo — I have forgotten what amendment you introduced, but the language I propose is the language which was last under discussion. I would also make another provision at the end of the sentence, instead of the italicised portion, "proper proof by such elector of the foregoing facts being required." I would insert, "proper proof by affidavit by such elector of the foregoing facts being required". So what do you have? You would have under this provision in the first place, in order to entitle a man to be registered without making personal application, this requirement, it would have to be a person who voted in that district at the last preceding annual election; it would also require him to furnish proof by affidavit and file it with the Board of Registration of those facts and the further facts now required by law to be stated, by an elector making personal application to register. In other words when I go to the election board in my district I am obliged to answer certain questions, my age; place of residence and how long I have lived there; whether I am white, brown or mulatto and other information of that character. I am required to answer these questions and subscribe my name to them. Now, gentlemen of the committee, and Mr. Chairman, it seems to me that if we could require of the absentee voter the same proof by affidavit, of the facts now required to be stated on personal application for registry, the statements being sworn to, there would be no danger whatever of any illegal voting. There is one other suggestion I have to make, that is the word "but" should be stricken out on line 1, page 2, and the words "except that all" should be inserted in the place of "but". These suggestions which I have made are provided for in the Proposed Amendment which I now hand up, and, Mr. Chairman, I ask leave to withdraw the previous amendments which I have offered.

The Chairman — The delegate asks leave to withdraw the Proposed Amendments presented by him. Without objection those amendments will be withdrawn.

Mr. Deyo — Mr. Chairman, may the Clerk read?

The Secretary — By Mr. Deyo: To amend by striking out from page 2, line 1, beginning with the word "but" and including the word "required", line 7, and insert "except that permission may be made for registration therein at the first meeting of the officers having charge of the registry of electors, without personal application, of an elector entitled to vote in such district and who voted therein at the last preceding general election, whose necessary duties outside the county in the pursuit of a regular vocation or occupation will occasion his absence therefrom during the several meetings of such officers, proper proof by affidavit of such elector of the foregoing facts and of the further facts required by law to be stated by an elector making personal application for registration being required."

Mr. Deyo — Mr. Chairman, I would ask to have the word "annual" erased and the word "general" inserted in its place.

Mr. Parsons — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Parsons: On page 2, strike out line 7 and insert "upon such proof and under such conditions as shall be prescribed by law".

Mr. Parsons — Mr. Chairman, this amendment which has been reported by the Committee providing for absentee registration will be liable to great abuse unless it is most carefully safe-guarded. The only safe-guard set forth in the amendment as reported is that contained in line 7 which says that there shall be "proper proof by such elector of the foregoing facts", that is, the facts as to his necessary duties outside of the county in the pursuit of his regular vocation or occupation. But mere proof of those facts will not be a protection. Of course, in addition, we would have the facts from him which the elector registering personally must give, but even those would not be sufficient and I have offered this amendment so it would make it perfectly clear that, if absentee registration is to take place, then the Legislature can call for any proof it sees fit, impose any conditions it sees fit, and the proof would be in addition to the ordinary proof required of electors registering personally. Now the question of identification would be very difficult. I believe that if absentee registration is to be provided, it will probably be necessary in the law to require that at some time in the year, within two or three months before election day, those who are to register in this way are to appear personally. Give them a certain length of time and let them appear at police headquarters, or something like that, so their identification can be made certain. What is the difficulty which we have in New York city when we try to verify the registration lists? We have to see the man. You go to the house — "He is not here". Now, unless you have

means of identification, how are you going to be able to tell when election day comes that the person who comes to vote is the person who registers? We know that in many instances it has been a common thing in times past for people having houses to be given names of people to be registered from those houses and when some one was sent around to identify the person, the answer of the maid who came to the door was, "Well, he is not here now; he is away on business." Now if we are to have this absentee registration, we must have it so safe-guarded that no such game as that can be put over. Now I wish to call the attention of the Committee to another amendment which is pending, an amendment which is proposed by my friend, Mr. A. E. Smith of New York. It is a very brief amendment. His amendment inserts after the word "only" on the top of page 2, the words "unless otherwise provided by law" and strikes out everything else. Now that would make the section read that in cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, "electors shall be registered upon personal application only unless otherwise provided by law". Now it is only necessary to call the attention of this Committee to the amendment, I suppose, to dispose of it. But the illustration which Mr. Low has given should be a warning to us. Let me give you a more recent illustration. The Legislature of 1908 passed a law which required an elector to sign when he registered and sign again when he voted. That signature law cut down the registration in the Assembly districts which are south of Fourteenth street in New York city by 10,000 in that election.

Mr. C. Nicoll— I agree thoroughly with what Mr. Parsons says and, agreeing as I do, I am naturally opposed to his amendment. It starts out to do the same thing as the other gentlemen have done to break down the safeguards that are being gradually built up around the elective franchise. Now, I am not looking at this matter from the standpoint of a birds-eye view of the case. I have had experience. I do not take the philosophical air of the ex-chairman of the Republican State Committee, nor do I look at it with the attitude of Mr. Low, who has not had so much recent experience in this, but I take the opposite view, the worms-eye view, a view at close hand. For several years I was election district captain in a district where there were not enough respectable men of either party or any party to make up a committee in this Constitutional Convention, where the percentage of change from year to year in the district varied between 15 and 20 per cent of the total registration there. And our great safeguard— and one of the great safeguards we had was the opportunity when men came in to register, to look them over to see what they looked like,

to see what sort of fellows they looked like, and to compare them, and after you take down their description to go around and call on them and see if they absolutely and really live there. Now, in all these other methods proposed, like filing an affidavit, instead of the personal contact with the election officers and poll watchers or the captains of the party, what do you get? You get a soulless affidavit. That is all, probably made out on a blank form, furnished by the Department of Election. You don't know whether that man — what his description is, whether he has a Roman nose, or whether he has got a lisp, or whether he talks with a German accent, or what the color of his hair is, and when you call on him to see if he really lives at the place he says he does, and climb up the six or seven flights of stairs you always have to climb in New York city, to find the reluctant voter, you find that he is not there; gone away; filed his affidavit and does not have to turn up; and the result is that you never see the man who is going to vote until he walks in on election day and says he has registered by mail and is entitled to vote. Anything you are going to do to change the present system is pretty dangerous. If you limit it to traveling salesmen, I have no objection, the Lord knows, as long as you can confine it to traveling salesmen. But how can you confine it to traveling salesmen? How can you confine it? And when it comes down to the last analysis the same fault exists with the amendments that have been offered that Mr. Parsons criticises with regards to Mr. A. E. Smith's amendment. They are such as the Legislature may provide. If Mr. Parsons or Mr. Wickersham or the gentleman who is to extend this right of absentee voting will write into the law, into the Constitution, the safeguard they propose, why, that is one matter; but, as a matter of fact, you are turning it over to the Legislature and making necessary only such proof as the Legislature may provide. Now, take the question of passports mentioned here to-night as the reason why we should extend a similar system here. And I would be very glad, if they want to extend absentee registration, if they would extend the same system that is necessary to get a passport from the United States government. It is harder to get a passport than it is to register to vote. You have to have your photograph taken two or three times, and when you get it taken, you don't go to a convenient polling place in the neighborhood. You go to the United States Court and appear before a commissioner, and he has you fill out an application blank, and the application blank is sent to Washington, and then you pay a dollar, and sometime thereafter you get a passport with your picture on it.

Mr. Westwood — Is it not true that there are some indictments pending now in regard to fraud in obtaining passports?

Mr. C. Nicoll — Yes, it is true that there are some indictments now pending. And now, gentlemen, we are proposing to shift this matter over to the Legislature and turn the whole matter over to them and allow them to say what is a commercial traveler, what class it shall be extended to, who is a student and under what circumstances he shall be entitled to vote. I think it is very dangerous in view of the progress the State has made in getting, in bringing about honest and plain elections.

Mr. Hinman — I have been one of those who for several years have thought that something should be done in the way of providing special registration for this very class of citizens who find that their business or occupation is going to take them away from their homes on the regular days of registration; and I, in 1913, provided or drafted a bill upon that subject and for that very purpose, and I remember very well considering the matter in some detail and considering the constitutional provisions which were involved; and I remember also very well the objections which were launched against the proposition that was submitted to the Legislature at that time; and that was that we could not provide for this special registration without personal application and that it was necessary that we should do it with personal application and in addition to that that we should provide for it after the regular registration had been concluded. You will find by examining the Constitution that it is perfectly possible to provide under the existing Constitution for doing justice to these groups without a single amendment. Section 6 of Article II provides only that registration boards shall be bi-partisan. We have in the State to-day a bi-partisan board of elections in every county and one in the city of New York; and the scheme that was contemplated and has been considered by the Legislature in the last two years has been to provide that these boards of elections in each county and in the city of New York should constitute for this purpose a board of registration sitting upon special days prior to the regular registration day for the purpose of accommodating these commercial travelers who could foresee the fact that they were going to be absent from the State upon a trip during the regular days of registration; college students who prior to leaving for college could foresee the fact that they were going to be away at college at the time of the regular days of registration; the actor; the federal employees who return here in the summer time upon their vacation, who cannot get away but who could register personally before this bi-partisan board of elections in each county before leaving again for Washington

after their vacation had expired; and railroad employees; or any other group, who, with the exercise of a slight degree of forethought, could, by making personal application, under such a statute as that, provide for their registration, and which could be amply safeguarded. I have here the bill that was introduced in the Legislature and that bill was not passed upon with approval, not because it could not be successfully done and within the terms of the Constitution, but because they desired to have this special registration after the regular days of registration had expired and because they wanted in addition to that to do it without personal application. I see that the time is limited. I will not go over the details of this bill, but I think that it is perfectly possible under the existing Constitution to provide for ample protection against injustice to all of these groups of citizens.

Mr. Barnes — How do you adjust the matter in relation to the thirty days' residence in the election district if you have a day of registration in the summer?

Mr. Hinman — Well, I assume that that might be a matter to be brought before the attention of the regular registration board when the matter is certified to the registration board of the election district before the regular days of registration, or at the time of the regular days of registration.

Mr. Barnes — You do not consider it insurmountable?

Mr. Hinman — I do not.

Mr. A. E. Smith — Inasmuch as parts of my amendment before the Suffrage Committee is included in this general proposition, I certainly have a small interest in it. I am not going to renew or refer to what I said the other night when I offered my amendment. What I said is on the Record and I stand for it now, to-night, and I believe it to be true. But when this Record is read, some of the men that make statements about the disposition of bills before us might be surprised by what they are able to read there. Mr. O'Brian from Erie and Mr. Low from New York, both said that it took a great many years to get this vigorous code of election laws written into the statute law of the State that so well safeguard our elections. That has all been done by the Legislature, and how can anybody in view of those expressions say that it is not safe to trust this question to the Legislature. They have built it up. Is it natural or fair to assume that in the operation of taking care of this particular thing they are going to proceed to tear down? That is not sensible. I think that will be well safeguarded by the Legislature if it is given the power to deal with the question. I could not let anything go into this Record about that tremendous falling off in the vote south of Fourteenth street without having some little explanation on a

page nearby where that was said. The signature law was passed in 1907 in extraordinary session after it had been defeated in the Senate by the votes of some upstate Republicans that had some little spirit of fairness, some men who thought they had just about gone the limit in imposing upon the voters of New York, and that to catch the one or two dishonest men who used their privilege to vote as a commodity, all the honest citizens must thereby be harassed, annoyed, bothered and pestered and pounded and dragged and pulled to death in order that the authorities may find one or two which, by the way, they seldom find. Now, the great falling off happened in the next election. Let me just inform the gentleman from New York that that falling off south of Fourteenth street was due entirely to the removal of over three hundred tenement houses to make way for the Delancey street bridge and the bridge that ends at the Bowery, through a very thickly settled district.

Mr. Parsons — May I ask the gentleman if there was enough population in those houses to make up for the falling off in votes?

Mr. A. E. Smith — Yes, sir.

Mr. Parsons — Oh, I beg your pardon; there was not.

Mr. A. E. Smith — Let me say there is a falling off every year in the registration south of Fourteenth street. There was a falling off in 1908. There was a falling off in 1909, and in 1910, and 1911 and 1912, and it must be understood by the gentlemen that if the Bronx is going to continue to grow, if Brooklyn is going to grow, Queens and Richmond growing too, in voters, they cannot all be immigrants that go to those other counties, they must come from New York. And where do they come from? From the lower end of the city, because it is more difficult to find quarters in the lower end of the city than it was a few years ago. Nowadays, when a man meets with a little prosperity he doesn't want to live down in our neighborhood any more, even if he is only appointed to the police department or the fire department, our neighborhood isn't good enough for him any more and he goes over to Brooklyn where he can have hot and cold folding doors.

Mr. Parsons — Is the gentleman aware that the registration in his own Assembly district was larger in 1908 than it was in 1910?

Mr. A. E. Smith — Yes, that is always so in a presidential year.

Mr. Parsons — And that was a presidential year?

Mr. A. E. Smith — I thought you said 1910?

Mr. Parsons — I thought I said 1908? I meant 1908.

Mr. A. E. Smith — That does not mean anything, sometimes one crusade in the health department has been known to close up four lodging houses on Park Row with two hundred and fifty to

three hundred men in each house. They come up there and decide that the inside partitions have got to be taken out to comply with some of the fire regulations and they move away from Park Row, and you will find a corresponding increase in the First Assembly district when they leave the Second, and they are back again the next year. Now the gentleman knows where all this talk about the voting down town comes from. He knows that three or four gentlemen who get around the green table in the Union League club, because they only live two men in a house themselves, they cannot understand how there can be forty men living in one house — and where do they send for their information? They send down to the old Fifth Republican district, the district that when we all started in politics in New York we were taught was the home of the original Philadelphia Repeaters. But the owner of the amendment desires to get in before the time is over. I could talk indefinitely on this subject but I would just like to have the measure right.

Mr. J. G. Saxe — Mr. Chairman, in view of the fact that the time has been extended fifty minutes I would like to speak very briefly for the proponents of this proposal. Now this bill, as pointed out a day or two ago, contains a number of propositions and as far as I can ascertain there is absolutely no objection to any of the different provisions on the first page and to which I will address my argument. As to the question of residence, the voting of absentee voters, that appears to be the only controversial question and I want to tell the Convention that I have not been approached by any Federal officer, any commercial traveler, any actor or any man of any class. I have regarded this Convention as an important duty. The President assigned me to the Committee on Suffrage. I could not find it safe to vote for a number of the bills introduced. I heard the advocates who came in behalf of all these different classes of citizens. Along with my fellow committeemen and with Mr. Louis Marshall who came to our help in trying to work out a satisfactory bill, and with the bill drafting department and General Wickersham with whom we kept in constant consultation, we prepared the provision which was virtually unanimously reported out by the Committee on Suffrage and which is now unanimously before you to-night. I cannot discuss any subject in relation to absentee registration if I am going to be met with such an argument as Mr. O'Brian of Buffalo made to-night in saying that the step next to absentee registration was absentee voting. It has absolutely nothing to do with it. The only case of absentee voting that the State of New York has ever recognized was in the case of war, with war ballots where the absentees are gathered together in a camp, and

have the same precautions as at home, presided over by an officer of the regiment, and where the boxes are sealed, where war ballots are voted and where the whole boxes, under due precautions, are sent back to the home districts. That is the only kind of absentee voting which this State has ever recognized and it will be a long time in my opinion before any Constitution ever permits any such thing as absentee voting.

We have had quite a considerable controversy as to the form of this Proposed Amendment. I have already adverted to the fact that I venture to say we have spent a hundred hours, different ones of us, working together trying to arrive at a form which would be safe. I was informed by the Bill Drafting department that they thought they had done better on this than on any other piece of work of the same size they had attempted. I was not particularly interested, but I have taken it back to one and another and attempted to arrive after a great many hours work, at something that was satisfactory. Now the difficulty with Mr. Lincoln's bill, which is before us, as an amendment and which is one of the amendments which was before the Committee on Suffrage, was that it opened the door wide to everybody, and we did not know whether it included the sick and infirm and disabled, or whether it did not riddle the whole election law from end to end. We tried to modify that safely in adequate language and I think it was our distinguished Chairman who suggested to-night "designated and defined". So that we in framing the Constitution would not have to go into the question of details, the question of definition, but that we could require the Legislature to do so so that the particular classes—for this right is only needed in any real need—in the particular classes and particularly those classes which could be brought before us on the committees—the commercial travelers, the trainmen actually engaged on trains; the college students, and the comparatively small group of Federal employees. There are a few others which if their claims become sufficiently strong to the Legislature they very possibly would be willing to include. But those are the big classes who appeared before us and who undoubtedly represent no less than 50,000 citizens of the State of New York duly qualified to vote and who have not been able to vote because they do not have opportunity to get back at the time of registration. I was inclined to accept Mr. Deyo's original amendment, in so far as I was concerned. Mr. Deyo has withdrawn that and he has suggested one that provides that the man must have voted the year before. Well a great many of these men did not vote last year and they will be virtually disqualified under that. I would prefer, if we are going to have a further restriction than that suggested at the end of this article,

that the Committee of the Whole should accept the amendment of Mr. Herbert Parsons, which he has introduced and which seems to add a little bit more protection. I do not want to be considered as talking politics, of down state and upstate, but I just want to say this to my upstate brothers. I think I understand the two situations after four years in Albany, but 600,000 voters in New York don't all understand it. When I go home to New York they say, "Of course, you are going to pass a bill for State-wide personal registration so that we will all be equal." And I have to tell them "Oh, no, there will be no State-wide registration." That is the feeling they have. They don't understand why upstate people can vote without registering at all while down in New York and in the other cities we have to go through the elaborate procedure which we have. Now there are 900,000 voters outside of Greater New York. I venture to say that of those there are 200,000 who vote without registering at all. Their names are dropped through the ceiling on to the registration desks on the first day of registration. After hearing Mr. Wickersham to-day and Mr. Barnes to-day, I could not help feeling that they had hit it on the head better than I had in the thought I may have, that in dealing with these 50,000 voters who are generally divided into three or four classes, you are not conferring any privilege on them. You are merely granting equality to them, the same equality and for the same reasons, which you gentlemen know of, that you do not require personal registration of those 200,000 voters upstate. Let me say this, let me make this distinction clear; as to those 200,000 voters upstate in villages of less than five thousand inhabitants, absolutely no proof is required. Their names can be put upon five different registration lists if they have as many residences, although I assume they will not vote five times. Now here we have the strongest kind of proof. The first question you ask is, what about identification. Why, on the first day of registration, you have that man's signature and in every district of the State, in villages of five thousand inhabitants or more, the signature law to-day prevails and from that affidavit filed on the first day to the day of election you have those two signatures to compare, so there is certainly no question about identification. And then when you come to the details required by the affidavit, the fact whether he is a resident or not can be checked up, not from the last day of registration, if he happens to walk in then, but here you have a check from the first day of registration. Now, gentlemen, I certainly hope that this Proposed Amendment will go to third reading, so that we can ascertain if there is really any sentiment against it. I want to assure you that I have been working for this amendment solely as a lawyer and a dutiful member of this Convention endeavoring to work out some plan which will look

after these fifty thousand voters who I think should be treated fairly. And if I may make the suggestion to the Chair, Mr. Westwood has suggested to me that he has proposed to strike out the provisions dealing with absentee registration and as that is a general amendment I suggest that that be taken up first.

Mr. Westwood — Mr. Chairman, is there any objection — I recognize the rule, but is there any objection to agreeing to vote upon the general amendment first? Messrs. Smith, Lincoln, Webber, Deyo and Parsons have proposed amendments dealing with the particular way in which we shall accomplish absentee registration while I myself deal with the broad subject, shall we have it or not.

The Chairman — The debate is now at an end under the rule. The question is whether there is any objection to having the vote first taken on Mr. Westwood's amendment, which would deal generally with the subject of eliminating the absentee registration provision.

Mr. J. G. Saxe — Mr. Chairman, if I may rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. J. G. Saxe — My recollection is that on two occasions when a similar question arose, when the conservation debate was on, the Chairmen in both cases, without making any requests, ruled that the general amendment should be taken up first.

The Chairman — If I hear no objection, that will be my ruling.

Mr. Parsons — Mr. Chairman, I submit that those amendments which go to perfecting this amendment, this absentee registration amendment, should first be taken up.

The Chairman — Then I understand you to insist upon the rule?

Mr. Parsons — I insist upon the regular parliamentary rule. I object.

The Chairman — The first amendment is that of Mr. J. G. Saxe. The Secretary will please read.

The Secretary — Page 2, line 5, after the word "vocation" insert the words, "or occupation".

The Chairman — Those who are in favor of inserting the words "or occupation" after the word "vocation" in line 5, page 2, will say Aye. Opposed, No. The motion is carried.

The Chairman — The next is that of Mr. Lincoln.

Mr. Lincoln — Mr. Chairman, that amendment was introduced by me with the idea of broadening out this particular proposition, if we are to have absentee registration at all. In view of the debate which has since occurred, I am perfectly willing to withdraw my amendment and let the broad proposition be voted upon, upon the amendments which have been offered subsequently.

The Chairman — If there is no objection to the withdrawal of Mr. Lincoln's amendment, I shall take it for granted that it is withdrawn by consent. There being no objection, it is withdrawn. The next is that of Mr. Webber.

Mr. C. A. Webber — Mr. Chairman, I will also withdraw mine.

The Chairman — Mr. Webber withdraws his amendment. If there is no objection to the withdrawal of that amendment, it is to be deemed withdrawn. Next is Mr. A. E. Smith's amendment.

Mr. A. E. Smith — I ask that we take a rising vote on my amendment, Mr. Chairman. I want to see how many of you believe in honest elections.

Mr. Bell — Mr. Chairman, as I am opposed to the Proposed Amendment, as well as any amendment thereto, I desire to be excused from the rising vote on the amendment. It is only a waste of time to count me.

The Chairman — I don't think that practically changes the matter.

The Clerk will read Mr. Smith's amendment.

The Secretary — On page 1, strike out lines 10 and 11. On page 2, after the word "only" insert "unless otherwise provided by law." Strike out all the rest of page 2.

The Chairman — Will you please read it as it will read as amended? It will strike out the words, "In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants," leaving "The electors shall be registered upon personal application only", and then it adds — what is the next one?

The Secretary — After the word "only" insert "unless otherwise provided by law".

The Chairman — Those who are in favor of Mr. Smith's amendment will rise. The gentlemen will be seated. Those opposed will rise. It is unnecessary to count. It is lost. The next is Mr. Westwood's amendment.

The Secretary — On page 2, line 1, strike out the first bracket and insert it before the word "voters". Strike out the balance of line 1 and all of lines 2 to 7, inclusive. Page 2, line 10, strike out the word "such" and all four brackets.

Mr. Cullinan — Mr. Chairman, may I ask the Clerk to read that bill as a whole now.

The Chairman — If the Clerk will read the words that are eliminated perhaps that will save time. It strikes out the words "but provision may be made for registration therein at the first meeting of the officers having charge of the registry of electors, without personal application, of an elector whose necessary duties outside the county in the pursuit of a regular vocation to be

designated and defined will occasion his absence therefrom during the several meetings of such officers, proper proof by such elector of the foregoing facts being required."

The Chairman — A division has been called for. Those who are in favor of Mr. Westwood's amendment will rise. The gentlemen may be seated. Those who are opposed to the amendment will rise. The gentlemen will be seated. The motion is carried by a vote of 57 to 52.

Mr. J. G. Saxe — I think our amendment has been disposed of and I move the section be approved as amended.

Mr. Buxbaum — There is another amendment pending before this House and I ask the clerk to read it.

The Chairman — Does that relate or has that any bearing on this subject?

Mr. Buxbaum — On this subject, I sent it up to the clerk.

The Chairman — It has not been received, and we haven't it on the record either.

The Chairman — Mr. Law's amendment is the next one.

Mr. Deyo — The amendment which I propose, substitutes other language for this language which has been stricken out. My amendment struck out everything that is stricken out, but inserted something else.

The Chairman — Mr. Law's amendment will be read.

The Secretary — By Mr. Law: Amend by striking out, page 2, line 1, all the amendment beginning with the word "only" and ending on line 7, with the word "required", and insert in the place of the matter thus stricken out the following: "by affidavit filed with the registration board and the Legislature shall prescribe the form, the essential provisions and the manner of filing of an affidavit which shall entitle an elector to be registered."

Mr. Law — I would have been entirely content if Mr. Westwood's amendment had carried.

Mr. Westwood — It did carry.

Mr. Law — Was it carried, Mr. Westwood?

Mr. Westwood — Yes.

Mr. Law — What is left for us then?

Mr. Westwood — Nothing.

Mr. Law — I withdraw my amendment.

The Chairman — Mr. Law withdraws his amendment.

The next one is Mr. Olcott's. The secretary will read.

Mr. J. G. Saxe — On Mr. Olcott's behalf I withdraw the amendment.

The Chairman — Mr. Olcott's amendment is withdrawn. Is the next Mr. Buxbaum's?

Mr. Buxbaum — I shall now withdraw my amendment, Mr. Chairman.

Mr. J. S. Phillips — I raise the point of order that the matter having been disposed of by all the new matter being stricken out, that these amendments are not now in order.

The Chairman — I do not know what they are until they are read. Mr. Deyo says his is a substitute.

Mr. Deyo — Mr. Chairman, my motion is a substitute and concerns the making of provisions necessary to protect the honesty of registration.

The President — The clerk will read Mr. Deyo's amendment.

The Secretary — Amend by striking out from page 2, line 1, beginning with the word "but" to and including the word "required", line 7, and insert "except that provision may be made for registration therein at the first meeting of the officers having charge of the registration of electors without personal application of an elector entitled to vote in such district and who voted therein at the last preceding general election, whose necessary duties outside the county in the pursuit of a regular vocation or occupation will occasion his absence therefrom during the several meetings of such officers; proper proof by affidavit of such elector of the foregoing fact and of the further facts required by law to be stated by an elector making personal application for registration to be required."

Mr. Westwood — I make the point of order that the amendment offered by Mr. Deyo and just read is not a substitute, although it may be called such, but rather an amendment to the language, all of which has now been stricken out. I followed it, as the chairman doubtless did, and it inserts words between lines three and four, takes out four words on line five and inserts about half a dozen words on line seven.

The Chairman — The Chair rules it is a substitute in his opinion.

The Chairman — Those who are in favor of Mr. Deyo's amendment will rise. The gentlemen will be seated. Those who are opposed will rise. The motion is lost. That leaves Mr. Parsons' amendment.

Mr. J. S. Phillips — It is out of order.

Mr. Wagner — Are further amendments in order?

The Chairman — We have passed beyond the time of amendments.

Mr. Wagner — Mr. Chairman, as I understand the motion to strike out the enacting clause is always in order until the final disposition of the proposition.

The Chairman — You will have to vote on the proposition now, I believe. At least that is the ruling of the Chair.

Mr. Wagner — Mr. Chairman, may I make that motion?

The Chairman — I think it is out of order.

Mr. J. G. Saxe — Mr. Chairman, some motion must be made at this point.

The Chairman — The motion has been made to adopt the remainder of this,—

Mr. J. G. Saxe — But, my motion was held out of order by the Chair and I had to withdraw it, and I must now make some motion in connection with my bill and I now concur with Mr. Wagner in making the motion to strike out the enacting clause.

Mr. Westwood — Mr. Chairman, the motion is redundant under Rule 27 which provides where the time is limited and the procedure of the Committee is defined, the amendment must be voted upon in its order, and then the question recurs, shall the amendment pass.

The Chairman — That is the ruling of the Chair.

Mr. Westwood — It does not require this motion.

The Chairman — The clerk will now read the remainder of the section as it now stands, as amended.

Mr. Parsons — I move to report the amendment favorably as amended.

Mr. Wagner — Mr. Chairman, I move to amend,— I offer an amendment to that motion that the enacting clause of the Proposed Amendment be stricken out.

Mr. J. G. Saxe — Mr. Chairman, I raise the point of order that the only motion before the House was my motion to strike out the enacting clause which is not amendable and which must first be voted upon.

Mr. Parsons — Mr. Chairman, I desire to call attention to Rule 27, which says: "When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The Proposed Amendment as amended shall then be voted upon, without debate, and the Committee shall then rise and report in accordance with the action which it has taken."

The Chairman — That has been the ruling of the Chair and unless the decision is appealed from that will be the procedure. I have asked the Clerk to read the Proposed Amendment as it now stands.

The Secretary — Section 4. Laws shall be made for the regulation of elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage hereby established and for their annual registration which shall be completed at least

fifteen days before each general election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, electors shall be registered upon personal application only. Electors not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

The Chairman — The motion is now on the adoption of the amendment as read.

Mr. Wagner — Mr. Chairman, I move that when the Committee rise it report progress and ask leave to sit again on this bill.

The Chairman — The motion is out of order.

Mr. Wagner — That is always in order, Mr. Chairman.

The Chairman — I have called for a vote upon the amendment as it now stands, as it has been read. Those who are in favor will say Aye. Those opposed No. It is carried.

Mr. Wagner — Mr. Chairman, let me call your attention to Rule 26. I am sure the Chair does not desire to rule improperly, but Rule 26 says: A motion to "rise and report progress" shall be in order at any stage and shall be decided without debate.

The Chairman — We were taking the vote when the motion was made. It had been called for. I do not understand that the rule permitted interruptions when a vote is being taken. The motion is not in order —

Mr. Wagner — "At any stage" means at any time.

The Chairman — That is not my interpretation of it.

Mr. Parsons — Mr. Chairman, I move when the Committee rise, it report the amendment favorably, as amended, for third reading.

The Chairman — That has been done, as I understand it. We have adopted the amendment and the report will be rendered in accordance with the vote taken.

Mr. Clinton — For the purposes of the record I desire to call attention to the fact that the amendment was not regularly read by the clerk.

Mr. Westwood — I followed him and I think it was.

Mr. Clinton — No.

The Chairman — It was read in strict accord with the amendment made by Mr. Westwood, which was carried, eliminating the matter which Mr. Westwood had asked to be eliminated, and inserting the matter which had been stricken out in the Proposed Amendment and which was proposed to be reinstated by Mr. Westwood's amendment.

Mr. A. E. Smith — Mr. Chairman, I move to reconsider the vote by which the Committee of the Whole reported this bill to the Convention and I ask that that motion lie on the table.

The Chairman — You have heard the motion to reconsider the vote by which this amendment has been adopted and the motion is made at the same time that the motion be laid on the table. Those in favor of this motion say Aye. Those opposed No. The motion is lost.

The Chairman — The Clerk will proceed with the reading of the calendar.

The Secretary — No. 786, General Order No. 25, from the Committee on Legislative Powers.

The Chairman — I understand there was a change in the order of the calendar in accordance with a resolution as adopted in the Convention, so that General Order No. 28, instead of General Order No. 25, will be in order.

The Secretary — No. 756, General Order No. 28, by the Committee on Taxation.

Mr. Griffin — When my remarks were interrupted last Wednesday, we had gotten as far as page 1188 of the record —

The Chairman — The gentleman will please preserve order. Mr. Griffin has the floor.

Mr. Brackett — I rise to a point of information.

The Chairman — The gentleman will state his point.

Mr. Brackett — I would like to ask the Chairman, very respectfully, if that is the Life of the late T. B. Reed, that the Chairman has before him?

The Chairman — I will state that I find that it is not in the library provided by the Committee on Information and Library.

Mr. Wagner — I would suggest that it really is not needed here. The Chair is quite competent without any advise from Mr. Reed.

Mr. Deyo — That is a compliment to the Chairman.

Mr. Griffin — Mr. Chairman, this proposition to provide a new article on the Constitution is one of the most important that has come or will possibly come before this Convention.

Mr. Quigg — Mr. Chairman, there must be some semblance of order in the Convention.

The Chairman — The gentlemen will please maintain order while Mr. Griffin has the floor.

Mr. Griffin — It has, however, the misfortune to be a very dry subject and one which gives but very little opportunity for eloquence or joviality and at this late hour of the night I am not at all surprised that the delegates after listening to such a long and interesting debate should be somewhat tired, and for that matter, reluctant to go into the question of taxation; but, nevertheless, it is on the books. It is the order of the day, and I beg to assure the delegates, Mr. Chairman, through you, that I am no more willing than they are to go into the subject at this hour.

The debate concluded on page 1188 of the Record. Up to that time, I humored myself with the belief that I had proceeded so far as to have shown, first, that Section 6 of the Tax Law requires that all real and personal property, subject to taxation, should be assessed at its full value. There was no difficulty about that proposition, because that is the law, but, Sections 50, 52 and 174 of the Tax Law assumes that this positive mandate is going to be disobeyed, and with a piquancy quite novel in the annals of statute making, practically induces disobedience by showing how infractions of the law may be presumably neutralized by a process euphoniously called equalization. Third, how this unusual incongruity in the law is followed to its natural consequence, how the law is disobeyed and undervaluation has become the rule throughout almost every county in our State. Following in the footsteps of the Chairman of the Tax Committee, I quote authorities showing the serious consequences resulting from undervaluation. Before leaving the authorities, I believe we will be helped by the observations of Edward M. Hydecker, former deputy tax commissioner of the city of New York, now deceased, and a man of exceptional talents and experience. Many of the members of this Convention will remember him and entertain for his memory the highest respect and esteem, not only for his ability but for his lovable and admirable personality. Before the Utica conference in 1912, he submitted a number of questions to various assessors throughout the State. In his address at the conference he said: "No inquiry was made as to the percentage of full value used in each city in assessing real property. The law requires full value and each assessor has to swear that he has assessed at full value. Hence the question is a delicate one. This is extremely amusing. Nevertheless, I am firmly convinced that it is practically impossible to obtain a fair and equitable assessment, except at full value. If any fixed percentage of full value is agreed upon as the basis of assessment, as fifty, sixty, or seventy per cent., this very percentage presupposes an actual appraisal at full value in order that the assessor may take the agreed percentage of full value to put upon the roll. The helplessness of the taxpayer under an assessment at less than full value is apparent. He must not only prove the full value of his property but he must show that the proportion of full value agreed upon by the assessor has not been evenly applied to his property as compared with other property. In other words, he has practically to attack the whole assessment. Whereas, if the assessment were at full value, his only complaint could be that his property was assessed at more than full value and the burden upon him would be confined to proof of this as affecting his parcel only." Mr. Chairman, in

accordance with the rule, observing that there is no quorum of the committee present. I call your attention to that fact. I raise the point of order to that effect.

The Chairman — I suppose the only procedure that is proper under those circumstances would be to rise and report to the Convention the fact that no quorum is present.

Mr. Wagner — Mr. Chairman, I move that the Committee rise and report to the Convention the fact that there is no quorum present in the Committee of the Whole.

Mr. J. L. O'Brian — Mr. Chairman, I think there is a quorum present within the bar.

The Chairman — The Clerk will count for the purpose of ascertaining whether there is a quorum.

Mr. J. L. O'Brian — I ask that the sergeant-at-arms notify the gentlemen in the lobby to return to the room.

The Chairman — The sergeant-at-arms will please request the members in the lobby to enter the chamber.

Mr. Griffin — May I be permitted to make an observation? I think the better plan would be to put the motion made by Senator Wagner that we rise and report to the Convention.

The Chairman — I understand the Chair is to satisfy himself as to whether there is a quorum here. I am very well satisfied that a quorum will be here in a moment. I see the gentlemen coming in. The Chair now sees a quorum. The gentlemen will proceed.

Mr. Wagner — May I inquire where the Chair sees the quorum?

The Chairman — I simply make that observation. If you want a roll call, I will have a roll call. I think that there is a quorum present.

Mr. Griffin — Mr. Chairman, I suggest that we have a roll call. In fact, I think that we are entitled to a roll call.

The Chairman — I think the Chairman was in error about calling the roll, but the Clerk will count and give additional evidence.

Mr. Griffin — I am a pretty good counter myself. I have counted the vacant seats. I find that there are about sixty people here within the rail.

The Chairman — Eighty-nine are present, which is a quorum.

Mr. Austin — Mr. Chairman, I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — A motion has been made that the Committee do now rise, report progress and ask leave to sit again. Those in favor of the motion will say Aye, opposed No. The Chair is in

doubt. The gentlemen in favor of the motion will rise. The gentlemen will be seated. Those opposed will rise. The motion is carried.

Mr. Griffin — Mr. Chairman, I move that when the committee rise, we report that the bill under consideration shall be taken up to-morrow as unfinished business and that the pending amendments be printed in the calendar.

Mr. Parsons — A point of order, Mr. Chairman. The motion is not in order.

The Chairman — That motion has been carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Marshall — The Committee of the Whole has considered General Order No. 48, being Proposed Amendment printed No. 780, introductory No. 711, and reports in favor of the passage of the Proposed Amendment, with amendments.

The President — The question is on agreeing to the report of the Committee of the Whole.

Mr. J. G. Saxe — Mr. President, I move to disagree with the report of the Committee and move that the Proposed Amendment be recommitted to the Committee of the Whole, to amend by inserting the matter stricken out which was reported by the Committee; that the Committee of the Whole be directed to report forthwith to the Convention as amended, and I ask that my motion lie on the table until to-morrow morning when we have a full attendance. I know there are a great many people in favor of this amendment who are unable to be here to-night and I ask that my motion lie on the table until to-morrow morning.

Mr. Westwood — I move to disagree with the report of the Committee and that the Proposed Constitutional Amendment which is reported by the Committee of the Whole, No. 756, introductory No. 679, be recommitted to the Committee on Taxation, with instructions forthwith to report the same with the following amendment.

The President — There is a motion pending.

Mr. Westwood — I find I was misinformed with relation to the report.

The President — The question is upon the motion by Mr. J. G. Saxe that the Proposed Amendment reported favorably by the Committee of the Whole be recommitted to the Committee of the Whole with instructions to report forthwith, with the addition of the matter stricken out, and that his motion lie on the table. All in favor of the motion will say Aye, contrary No. The motion appears to be lost. It is lost. The question now is upon agreeing with the report of the Committee of the Whole. All in favor of

agreeing with the report will say Aye, contrary No. The Ayes have it and the report is agreed to and the Proposed Amendment is advanced to the order of third reading.

Mr. Marshall — On behalf of the Committee of the Whole, I report that General Order No. 28, Printed No. 756, introductory No. 679, has been considered in committee, that it reports progress and asks leave to sit again, and that the measure be considered as unfinished business, taking its place on the regular calendar.

The President — The motion is that the Committee have leave to sit again on the taxation article and that that article be considered as unfinished business. All in favor of granting leave to sit again will say Aye, contrary No. The leave is granted. If there is no further business before the Convention, I move that the Convention adjourn until to-morrow morning.

The President — Will you withhold that motion long enough for the Chair to make an announcement? There will be a meeting of the Committee on Rules immediately after adjournment this evening. It is moved that the Convention do now adjourn. All in favor of that motion will say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until ten o'clock to-morrow morning. Whereupon, at 10:25 p. m. the Convention adjourned, to meet at 10 a. m., Thursday, August 12, 1915.

THURSDAY, AUGUST 12, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Most gracious God, our Heavenly Father, in Thy loving kindness Thou hast brought us out of the shadows of the night into the light of another day. And we pray that in this moment of quietness ere we set ourselves to the tasks which await us, our minds and hearts may be filled with the spirit of purity and of power. Grant unto us the conviction, the earnestness and the endurance of those who know themselves co-workers with Thee in the eternal issues of truth and of righteousness. Help us to see the higher and the lower, the upward and the downward, the more true and the less true, not as indifferent alternatives but as veritable paths leading either to the ever clearer light or to the deepening darkness. Teach us Thy truth, oh God, and lead us in Thy way so that we may work out among men Thy sovereign purpose and Thy holy will. For Thy Name's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal is approved as printed. Presentation of memorials and petitions.

Mr. Blauvelt — I hand up a memorial of the United Spanish War Veterans from the 23d, 25th and 27th districts.

The President — Referred to the Committee on Civil Service. Any other memorials or petitions? Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

The President — Reports of standing committees.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules respectfully submit the following report.

The Secretary — Mr. O'Brian for the Committee on Rules submits the following report recommending the adoption of the following special rule: Resolved, That when the Committee of the Whole resumes consideration of the pending proposition, General Order No. 28, Taxation, the debate be limited as follows, namely: After 11 o'clock a. m. all speakers be limited to not more than ten minutes each. Final vote to be taken upon the proposition not later than 1 p. m., and, further, that General Order No. 50, Home Rule for Cities, be made a special order for Friday morning, August 13th, at 10 o'clock.

Mr. J. L. O'Brian — Mr. President, for the information of the House I call attention to the fact that final vote upon taxation, which is the pending proposal, will be taken not later than 1 o'clock. It does not necessarily mean 1 o'clock. The vote may be taken prior to that time. The following order of business, at 2:30, will be the consideration of the proposition of legislative powers, General Order No. 25, which has already been set for a special order to-day. I move the adoption of the special rule reported.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Mereness — Mr. President, I offer the following report.

The Secretary — Mr. Mereness for the Committee on County, Town and Village Officers, to which was recommitted Proposed Amendment by Mr. Kirby, Print No. 57, Int. No. 57, entitled: "Proposed Constitutional Amendment, To amend Section 1, Article X, of the Constitution," and to which was referred Proposed Amendment introduced by Mr. R. B. Smith, No. 447, Int. No. 435, entitled: "Proposed Constitutional Amendment, To amend Section 1, Article X, of the Constitution, in relation to the removal of county officers," after having given consideration

to both of said proposals, reported in favor of the passage of the following to constitute Section 1 of Article X of the Constitution.

The Secretary — Second reading. To amend Section 1 of Article X of the Constitution.

The President — Is there any special disposition to be proposed of this Proposed Amendment? The Chair hears none. Referred to the Committee of the Whole.

Mr. Blauvelt — I understand that when the Convention adjourned or just before adjourning last evening, the report of the Committee on Governor and Other State Officers was presented. I would like to file at this time a minority report. It was ready last evening, but I assumed that the majority report would not be presented until the regular order of business this morning, and I happened to be out of the Chamber at the time and I ask unanimous consent, therefore, to present my minority report now.

The President — Without objection the leave is granted, the report is filed and it will be printed under the rule.

Mr. Bockes — As a member of the Committee on Governor and Other State Officers I ask leave at this time to file a minority report.

The President — Without objection the minority report is received, filed and will be printed under the rules.

Mr. Wiggins — As a matter of information I would like to know whether the Committee on Governor and Other State Officers have had printed, as was done with the majority report, copies of the minority reports. If not, I would suggest that they be read for the information of the members present.

The President — The Chair will inform the gentleman that that is not the function of the Committee. Under the rules both the majority and minority reports are printed by the Secretary of the Convention. The Chair is advised that all reports handed in yesterday have been printed in accordance with the rule. Any further reports of standing committees? Reports of select committees. Third reading. Unfinished business of general orders. The Convention will go into Committee of the Whole for consideration of the special order of the day and the calendar. Will Mr. Jesse Phillips be good enough to take the Chair? (Mr. J. S. Phillips takes the Chair.)

The Chairman — The Convention is now in Committee of the Whole on General Order No. 28.

Mr. Griffin — When we adjourned last evening I had read a part of an address delivered by Mr. Hydecker, deceased, former Deputy Tax Commissioner of the city of New York, at the Utica Conference in 1912. Before this conference he sent out a list of

questions to be answered by assessors and it will be recalled that he said that he did not interrogate them upon the question of full valuation because he said it was a very delicate question and he called it very amusing. And amusing it is indeed because if a man perjure himself in a legal proceeding he is tried and convicted as a common malefactor. If, however, he happens to be an assessor and his perjury is in a tax proceeding, he is applauded in his tax district as a public benefactor. Not only that, but the law opens the door to him and provides rules to minimize his turpitude and calls the refined procedure by the sweet name, equalization. It is like passing a law against larceny and then in smooth simplicity providing by other statutes that when a man robs one neighbor the proceeding shall be equalized by taking from the others a sufficient part of their property to equalize the theft so that none shall suffer more than another. The gentlemen who are responsible, or rather were responsible for this statute might be conceived rewriting the Ten Commandments. Under their ingenious hand the commandment against stealing would read something like this: Thou shalt not steal, but if thou dost thou shalt not be punished but from each of the neighbors of thy victim there shall be taken a modicum of his goods to make up the amount lost through thy iniquity. Thus shalt thine offense be equalized and all shall be happy and praise thee.

The Chairman — Will the gentleman cease for a moment. The Committee will please preserve order. It is almost impossible to hear what the gentleman is saying. The Committee will therefore maintain order while this debate is going on.

Mr. Griffin — The members of this Convention a short time ago doubtless received a document from William A. Prendergast, the Comptroller of the City of New York, entitled Report on the Apportionment of State and County Taxes, together with suggested legislation for securing uniformity and equality in the assessment of real property. I call your attention to page 3 of this report where you find this title: A Fundamental Defect in Existing Methods of Tax Law Administration, and which reads as follows: "Although Section 6 of the Tax Law requires that all real and personal property subject to taxation shall be assessed at full value and that each assessor on the completion of the assessment roll shall make an oath to the effect that he has complied with the law as to the valuation of the several parcels of property included in his district, it is a matter both of record and common knowledge that, with the exception of the city of New York, and perhaps, in parts of one or two of the other large cities, property throughout the State is greatly under-assessed. the valuations of local assessors representing variously from

twenty to ninety per cent. of full value. To this practice may be laid in a large measure the resulting evils of inequality in the distribution of the tax burden. When it is remembered not only that the local assessment roll is the basis upon which the local expenses of the town or city are distributed, but that the town and city assessment rolls as equalized are the basis for the distribution of State and county expenses among the several cities and towns of the county, and that the aggregate of each county as equalized, in turn, forms the basis upon which State taxes are apportioned, it will readily be seen how far-reaching are the effects of this violation of the statute." Then he quotes opinions on the same line which I will not read for economy of time, from authorities of national reputation; Professor Carl C. Plehn of the University of California; Professor Charles J. Bullock of Harvard University; from the Minnesota State Tax Commission of 1912; from Professor E. R. A. Seligman of Columbia University, and perhaps, that being a near authority, it might be well to read it. Professor Seligman says: "Of all the methods that cry out most loudly for reform, that of property valuation is the most important. The great aim of the day is to replace arbitrariness by certainty and to secure practical equality in taxation by substituting as far as possible definite and fast rules of assessment for the hodge-podge, capricious system or lack of system which is well-nigh universal to-day." Those are the words of Professor Seligman. Oscar Leser, former judge of the Appeal Tax Court of Baltimore, now a member of the Maryland State Tax Commission, stated "The customary under-assessment is used simply as a cloak for inefficiency and favoritism. When the legal standard is habitually disregarded, the substituted standard can be anything that the assessors or assessing bodies choose to make it. The fiction will be steadily, studiously encouraged that a ratio of two-thirds or three-fourths is the rule, but it becomes increasingly difficult to check up inequalities, and still more difficult to secure relief when the fact is established. The assessor can point to the law requiring full valuation and challenge the objector to prove that the law has been violated in his case. All property owners may be under-assessed though in greatly varying degree: yet each is lulled into silence by the belief that he has secured an advantage over his fellows. Full valuation furnishes a ready means for exposing the weak spots, something which the conscientious assessor welcomes as much as the general taxpayer. It simplifies and encourages close scrutiny. It encourages careful work and raises the appraisal of property for taxation to the dignity of a science. Assessors are required to be expert in judging values rather than in guessing at them. The assessment function is

raised to greater dignity as the importance of a business-like administration is brought home directly to the taxpayers." The Wisconsin Supreme Court, in the case of *State ex rel. Hessey v. Daniels*, Town Clerk, 128 N. W., having under consideration the constitutionality of an act of the Wisconsin Legislature in discussing the facts of the case, made this interesting observation as to the effect of under-assessment: "So long as the practice prevails of assessing property in different localities at figures varying from 25 per cent. or more of its true value, and of doing the same thing locally for that matter, so long are we liable to have gross inequalities in the distribution of tax burdens." I have been asked this question, if the statute law of the State of New York contains the provision requiring full valuation and it is not obeyed, why put it into the Constitution? Now my reply to that is this: Because laws could not then be passed to make respectable and excusable its deliberate violation. Because then all your mathematical formulas to equalize inequity would go by the board, because if it were then disobeyed as Section 6 of the law is to-day disobeyed, the power would rest safely and securely in the hands of the State Tax Department to order a reassessment instead of an equalization which has heretofore proved a fraud and a sham. We will now take up the question as to how this amendment affects property other than real estate. So far I have emphasized the relation of this amendment to real estate, but it has its aspect in regard to personal property. Now, with respect to that, there seems to be an undercurrent of sentiment against the taxation of personal property. This has its foundation in two powerful causes. First, by reason of its intangibility, it has been in the past an almost insuperable task to locate it, to appraise it and to tax it. Consequently the insistence upon a personalty tax has invariably worked inequitably and imposed undue burdens upon those who are honest enough to reveal their wealth, and upon those who, much against their will, have their personal property discovered. A second cause is to be found in the secret belief induced by the study of a certain school of political economy that personal taxation is double taxation; that all wealth is the product of the land and that when you have taxed the land you have taxed all personal wealth that arises out of it. Without going into that question, it is enough to say that that philosophy does not take into consideration the inequitable distribution of wealth under the present economic conditions. In an ideal commonwealth there would be no marked disparity in the distribution of wealth, but all men would earn and obtain the fruits of their brain and their brawn. The present day, however, is marked by the accumulation of vast fortunes obtained largely, and I do not say this in

a derogative sense, through the operation of unjust special laws. Consequently there is a strong feeling of unrest among the tillers of the soil and a general sentiment that those who have profited from inequitable special laws and who have their wealth secured in bonds and stocks instead of cattle and barns should bear some of the burdens of taxation. This sentiment has given impetus to the income tax movement and is responsible for our statutes taxing mortgages, secured debts and bank stock. The mortgage tax law taxes mortgages on land one-half of one per cent. and thereafter exempts the mortgages from taxation. This exemption has worried the extremists a great deal and the mental attitude of these is disclosed in the resolution humorously introduced the other day giving the owners of the land the same privilege of exemption on filing his deed in the recorder's office. However, there is an element of justice in the exemption of mortgages from subsequent taxation for the amount represented by a mortgage on land pays its equitable share of the tax when the tax on the land is paid. To make the mortgage tax an annual burden would in the last analysis have no other effect than to throw an additional burden on the land. The mortgage tax law therefore is a compromise to sentiment. A further compromise is to be found in the tax on bank stock and on secured debts. Under section 24 of the Tax Law, reference to which was made the other day by the chairman of the Committee on Taxation, bank stock is assessed annually at one per cent., which tax is in lieu of all other taxes whatsoever for State, county or local purposes upon the said shares of stock; and mortgages, judgments and other choses in action and personal property held or owned by said bank, the value of which enters into the value of said shares of stock, are made exempt from all other State, county or local taxation. These special tax laws are, as I said, compromises and are deemed to be in a class by themselves. One of the arguments which I have heard used against the principle of full valuation as embodied in my amendment is that such a doctrine, if engrafted in our Constitution, as well as in our laws, would prevent this classification of these and similar forms of personal property. That argument is not valid. The question of valuation has nothing to do with the ratio of taxation. You can value property according to any scheme you like, but that does not preclude you from classifying it as you please, and adopting various rates for your different classes.

You will notice in my amendment I use the expression that valuation of all property shall be uniform and at full value for purposes of taxation — not assessment. I do not use the term "taxation." As for classification of personal property, we do it now under our laws as they stand, and you do it with the distinct

mandate of the statute staring you in the face. There is no jugglery or chicanery by which you can get away from full valuation. Even in your statutes which attempt to classify personal property, you must start first with full value or with its equivalent before you can put your process, whatever it is, into operation. Even the tax assessor who defies the law and makes up his mind to assess on the basis of 25 per cent. of full valuation must begin with full valuation at the outset of his calculations. If he does not, he cannot determine what 25 per cent. valuation is. In the assessment of bank stock the rule set out in section 24 of the Tax Law is one that is predicated upon elemental justice. It takes into consideration the material factors of value, namely, the capital stock, plus the surplus, and it leaves out the extraneous elements of value which constitute good will, elements which evaporate into thin air when liquidation is attempted. To insist upon more than this would be like insisting upon valuing land for purposes of taxation not only on its present market value but upon its future value, upon the happening of a future contingency, like the building of a railroad or the construction of a new highway or bridge not yet in being. When it comes to the valuation of a bank or banking association in liquidation, section 24 of the Tax Law quite justly takes into consideration the actual assets. In short, there is only one way to value property, whether real or personal, and that is according to its full value, at least as long as taxation of personal property is deemed judicious. No other plan will satisfy the owners of the land. So long as the tiller of the soil sees his efforts taxed on the basis of full value, so long will he, and so long ought he, to insist upon like methods in the imposition of taxes on personal property. He may be willing to see personal property put in a class by itself and even to see it granted certain exemptions, but he will quite logically and naturally insist upon knowing in tangible figures the extent of the exemption. In no other way can this thought be brought concretely before him than by valuing the personal property so favored, so privileged, according to its just and true value. Now I do not offer the fact as an argument except to show that my proposed amendment is not a novel and untried proposition, but in twenty-two States of our Union we find similar provisions — Alabama, Arkansas, Indiana, Florida, Idaho, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, North Carolina, North Dakota, Oklahoma, Ohio, Oregon, South Carolina, South Dakota, Utah, and Virginia. The last State to adopt this plan of full valuation and putting the declaration in the Constitution as a guide and beacon was the State of Ohio in 1912. Now mark what the statute of Ohio says. Article 12, section 2: "Laws

shall be passed taxing all real and personal property according to its true valuation in money," and even goes further than my amendment. My amendment simply goes to the valuation, but in the State of Ohio they go even further and say taxes.

In the Indiana Constitution, we find also similar language. Article 10, section 1: "The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation and shall prescribe such regulations as shall secure a just valuation for taxation on all property both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes as may be specially exempted by law." I am opposed to the proposition of the Tax Committee permitting the Legislature to prescribe how taxable subjects shall be assessed. It has already had that power without question for many years, and you have seen how utterly and completely it has failed. It passed a tax law which, as I showed, requires property to be assessed at its full valuation and then by other sections invites disobedience and infraction of its own mandate. It will probably do so again. What guarantee have we that its mandate will be more scrupulously observed in the future than it has been in the past? The thing to do is to have the Constitution prescribe how property shall be assessed, for here lies the possibility and the fruitful source of all injustice. And let the Legislature make as many classes of taxable property as it deems fit, and the patience of the people will stand. Now, this is all that the chairman of the Taxation Committee really prays for and I am heartily in favor of according to him the desired improvement. I am, therefore, going to offer the following amendment to the pending bill: On page 2, line 2, after the word "describe" strike out the words "how taxable subjects shall be assessed," and insert the following, "the subjects of taxation and how they shall be taxed;" making the section, or rather the paragraph, read, "the Legislature shall prescribe the subjects of taxation and how they shall be taxed, and provide," and so forth. Now the State of Nebraska requires taxation of all property uniformly. It does not say assessment of all property, but taxation. The Constitution of Kansas has this language: "A uniform and equal rate of assessment and taxation." You see that is going much further than we attempt to go. Now I have been asked how this provision operates, where it is in operation in other States, where there is a conflict and question as to the authority of the State Department of Taxation. Now in reply to that I refer to the following case: The Central Railroad against Mayor of Jersey City, 199 Federal Reporter, page 237 (United States District Court); 212 Federal Reporter, page 76 (U. S. Circuit Court of Appeals). In that

case, it was held that the Constitution in New Jersey requiring all assessments to be at full value, the ruling of the State court that this precludes any individual from obtaining a reduction in assessment, unless this property is itself assessed above full value, and in that case of discrimination in favor of other property owners his remedy is to have their assessments raised, is substantially a denial of the equal protection of the laws, because it puts an undue burden upon the individual. Now there we have a ruling of the highest court in our country on this proposition, and that puts at rest the assertion that if you put this declaration in the Constitution you are going to impair the right of the individual to appeal in the usual way for relief in the courts.

The Minnesota Commission, at the Fourth Annual National Tax Conference, expressed itself as follows, through Samuel Lord, who was a member of that commission: "The Minnesota Commission has little faith in equalization as a remedy for bad assessments. We believe that to undertake the collection of a poor assessment by equalization is commencing at the wrong end of the problem and is about as apt to make a bad matter worse as it is to result in improvement. That, after all, the thing that is required and the problem to be solved is how to get a correct assessment of the property in the State and in the various communities in the first instance. It needs no argument to show that if property was originally assessed as it ought to be, there would be little need for equalization either by a county board or by a statute board. Now take the table I referred to on Wednesday of last week, to be found on page 1187 of the Record. Now, there I assume a hypothetical case and for convenience in the calculation considered that there were only four tax districts in the county, where as in most of the counties of our State there are many more. I have a list here obtained from the Tax Department showing the various counties of the State, the number of towns, the number of boards, the number of tax districts, the number of assessors, and the number of supervisors. Now, from that I gather the following information: Cattaraugus has 35 districts, St. Lawrence has 33, Steuben has 34, Allegany has 29, Erie has 28, so has Oneida 28, and Oswego and Otsego each have 25. Now, remember that is not counting the various village tax districts. Those are simply the town districts which are used as the basis of an imposition of a direct tax. In the entire State we have 900 tax districts; 1,325 supervisors and 2,975 tax assessors. Just imagine equalization applied to all of these and you obtain a notion of our utter hopelessness and helplessness in trying to temporize with one of the greatest evils with which this State is cursed. In this table, on page 1187 of the Record, if you

will look at it, you can readily detect at a glance the fruitful source of all our trouble in trying to devolve an equitable plan of taxation out of that discredited system. In the first column of this table we have the ratio, the ratio which the assessors adopt as the basis — the alleged ratio adopted as the basis of their assessments. In the second column, the assessed valuation; in the third column, the actual valuation, which they are supposed to arrive at first; in the last column, the equalized valuation; and there your equalization boards run up against a mandate of the statute which says that they cannot interfere with the aggregate valuation in any district or in any county. So by hocus pocus and jugglery they are bound to alter these figures by additions and subtractions, so as to get the valuation back to where they started from. It will be seen at a glance that the value of the above equalization depends upon the accuracy of the ratio established under Rule 1; Rule 1 is contained in section 50 of the Tax Law, a complicated rule consisting of five parts. Now, it is a mathematical truth or maxim, that if an error creeps into one factor of the equation, your whole equation is utterly destroyed. Now, in the first column of this table, under Rule 1, we find the factor that is subject to error. This column has a factor in the calculation that contains several elements of error. It is obtained from a biased source and is largely dependent upon the say-so of the assessor. It may contain over-valuation beyond the predetermined ratio and it may contain under-valuations. The under-valuation will be due to political, social or corrupt influences. The over-valuations will be due to ignorance, carelessness, or some unworthy animus. All of these constitute a wide margin of indefiniteness and uncertainty which go to vitiate the entire calculation.

In fighting for the term "equalization" in this bill, on page 2, line 7, remember that I have introduced an amendment to cut out of line 7 the words "and equalization," making the sentence read "The Legislature shall provide for the supervision and review of assessments." The bill as proposed states that "The Legislature shall provide for the supervision, review and equalization of assessments." I want to cut out those words "and equalization," because I believe that where you give the Legislature the power to provide for review, you give them all the power that is necessary. In fighting for the term "equalization" the Chairman of the Tax Committee is fighting for something that he does not really want. Take his own statement. He does not want to equalize the classes of improper valuation which he, together with every other tax expert, has railed against so long. He wants to correct them, so as to make them conform to the truth and the law. In other words, he wants to go into the locality where disobedience

and defiance of the law is found, and if necessary, order a new assessment. He now has that power. Since the enactment of chapter 317 of the Laws of 1915, there is absolutely no necessity whatever for the retention of the term "equalization" either in the law or in the Constitution, but especially should it be excluded from the Constitution, where, if retained, it would continue to give a sanction to under-valuation. Where a vice has been engrafted into a system, a law, it may be excusable to cut away the malicious growth with care and deliberation, but it would be the worst possible policy to foster and augment the further growth of that weed. To give recognition in our Constitution to the ponderous and unscientific makeshift of equalization, would be deplorable and would only create a constitutional barrier to its ultimate elimination; and remember, that is what we all want. No tax expert is satisfied with equalization. They are aware of its iniquity. They are aware of its defect. They don't want equalization; and yet in the face of that well-known and general sentiment throughout the State and throughout the country, the Tax Committee of this Convention has the boldness to present an amendment to this Constitution preserving the term "equalization" or, rather, putting the term "equalization" into our Constitution. You cannot do away with equalization by putting it in the Constitution. When you put it in the Constitution you freeze it there for all time. How, may I ask, will the Chairman of the Tax Committee, the head of the Tax Department of this State, be able to get rid of equalization if he and the defenders of this proposition insist upon putting the term "equalization" in the Constitution? To every effort that he may make to secure the full valuation of property, they will reply that his remedy is not in the rectification of the assessment roll, but in the equalization which the Constitution, if the Tax Committee's proposal is adopted, will then recognize and sanction. There is the danger. At first blush it would seem immaterial whether or not property is appraised for purposes of taxation at its full value. The inference is correctly drawn that if all property of all owners at all places is assessed at the same ratio of its value, it would make no difference whether the valuation was put at 90 per cent., 50 per cent. or even 10 per cent. All would in that event bear its proportional burden.

But the fact is that all property of all owners at all places, even in the same tax district, is not valued at the same ratio. The very fact that there is no compulsion in the matter, and that the property may be assessed at less than its value, invites discrimination and opens the door to favoritism and corruption. While in theory it is immaterial whether or not property is

assessed at its full value, or less than its full value, and since assessing it at less than the full value has proved a fruitful source of inequality, there is no excuse to longer retain the custom of assessing it at less than its fair value. The effect of the New York State Tax Law is to sanction the violation of the law. In one section it directs valuations to be made at their full value and in another assumes that that provision will be violated and flouted. It gravely justifies and even encourages that violation and then attempts, by an involved system of boards of equalization and intricate mathematical rules, to minimize the perils to which it is obvious an inherently vicious system will inevitably lead. But all in vain; for no boards of equalization, however fair, and no rules of equalization, however accurate, can locate, minimize or correct the vicious and often fraudulent inequalities that creep into the original appraisal. It may be asked, what will happen if this proposed amendment should become effective? Simply this: It will end the absurdity of one part of the statute laughing at the other. It will abolish the involved machinery of boards of equalization and the equally involved rules by which they attempt to do something that ought to be unnecessary in any rational system of taxation. It will require tax officers to appraise property at its full value or fail at their peril. It will make it a duty for them to do justice instead of, as now, leaving the dispensation of justice a matter of personal or individual opinion, favor or caprice. It will leave it to the self-interest of owners to say that they are not over-appraised or that their neighbors, through mistake, are not under-appraised.

The Chairman — The hour of 11 o'clock has arrived, and under the rule I think the gentleman's time has expired.

Mr. Griffin — Just one sentence more. It will wipe out the whole vicious system of variances in the appraisal of property in the different counties of this State, a system which in spite of boards of equalization will make the imposition of a direct state tax a constant source of inequality and injustice.

Mr. Chairman, I thank you for the indulgence. You see how well I was able to measure my remarks within the time limit. That completes my remarks.

Mr. Lincoln — I understand that the Committee has under consideration section 3 as well as section 2, concerning which —

Mr. C. A. Webber — Mr. Chairman, a point of order.

The Chairman — The gentleman will state his point of order.

Mr. C. A. Webber — There is not a quorum present and this is too important an article to be discussed without a quorum.

The Chairman — The Chair rules that a quorum is present.

that there are more than a majority of the members of the Convention now in the Chamber.

Mr. C. A. Webber — I call for a count, Mr. Chairman. I have counted sixty people in the room.

The Chairman — The Secretary will count. The delegates will take their seats. The Sergeant-at-arms will summon the delegates from the corridors.

The Secretary has counted and reports that more than a majority of the members of the Convention are present.

Mr. Lincoln will proceed.

Mr. Lincoln — Mr. President, assuming that section 3 of the proposal of the Tax Committee is under consideration, I wish to address myself to an amendment to that section which I have prepared and which I will read and later send to the desk. The amendment is in the provision relating to the creation of tax districts not larger than a county. This provision is that no such tax districts larger than a town shall be established until the law providing therefor shall have been adopted by vote of the majority of the people voting therein, in such district, at an election for which provision shall be made by law.

Mr. Chairman, this proposal on my part is aimed to make more practicable the provision which has met some criticism on the part of this Convention and contained in section 3 of the committee's proposed amendment. I think that that section aims to provide a real reform in the matter of tax assessment and collection, and for that purpose I heartily support that particular section although I am not in particular accord with some of the sections of this article; but I hope that same provision can be made whereby the State can avail itself of the proposal of the Committee relating to tax districts not to exceed in size the boundaries of the county. The evils which exist under the present system are great. The gentleman who last spoke adverted to the fact that there must be somewhat over three thousand tax districts in the State. I have a letter relating to tax districts in Erie County, and a table prepared by the present county auditor of Erie county Mr. George S. Buck, addressed to Mr. O'Brian. Mr. Buck has had long experience as supervisor of the county and is perhaps as well known concerning the situation there as any other official in Erie county. He says "It is a great task to gain exact information as to the number of assessors in Erie county and their total pay. I hope that what is furnished will answer your purpose. There are seventy-three town assessors, forty-two village assessors and about seven hundred and fifty school district assessors or eight hundred and sixty-five altogether. The school district assessors appear to be inactive as a rule.

There are about two hundred and fifty school districts. Each district has from one to nine trustees, who act as assessors and usually accept the work of the town and village assessors, but not always. All assessors, including school district trustees, are entitled to \$3 per day. Town and village assessors probably receive about \$200.00 each per annum. I think it rare, if ever, that the school district trustees collect the fees to which they are entitled when sitting as assessors. There is a town collector of taxes, a village collector and a school district collector. The town collector is paid 1 per cent. for all taxes collected in the first thirty days, 5 per cent. on all collected thereafter and the county gives him 2 per cent. on all returned unpaid. The school district collectors are paid 1 per cent. on all taxes paid in the first thirty days and 5 per cent. on all paid thereafter. This puts such a premium on delay that the railroads had a law passed requiring school district collectors to file a copy of their rolls with the county treasurer so far as railroad property is affected and permitting them to pay their school taxes to the county treasurer. The system is so minutely divided that many incompetents work on parts of it. One collection of taxes, one levy and one assessment all done through a competent organization would undoubtedly result in a large annual saving." The same difficulty has been pointed out by Henry J. Cookinham, County Attorney of Oneida County, in a paper which he read last fall before the First Conference for Better County Government in New York State, at Schenectady, in which he alludes to his own county of Oneida. He said: "Consider a typical New York county, my own, containing two cities, 26 towns, 19 incorporated villages, 23 special districts and 355 school districts outside of the cities. There are more than 400 bodies, composed of more than 1,200 persons, with power to fix values, to assess for purposes of taxation, and more than 400 collectors of taxes. The county and each one of the other 425 districts mentioned has power to raise money by taxation for its own purposes." Again he says: "In each school district the trustees have power to assess for school purposes. In most of our special districts the special tax is levied upon the valuations fixed by town assessors. Our cities make their own assessments. Our villages have power to make theirs, and usually do so, though in some instances they take the values as determined by the town assessors. The valuations in each town are determined by the town assessors. The valuations for the purposes of State and county taxes are determined by a so-called board of equalization, consisting of the board of supervisors or persons appointed by it. This so-called equalization consists simply of adding or subtracting certain percentages to or from the total valuation placed upon the property

of a town by town assessors. It is, in fact, assessment by towns and amounts to a re-assessment of every piece of property in the town. (This equalization is too often *in personam* and not *in rem*.) A man, therefore, may have property in a school district, in special districts, in a village, in a town. This property may be valued by different bodies with power to assess at two, three or four different values in the same year, and then through county equalization a fifth value be placed thereon." The same difficulty has been pointed out in Nassau county: "Nassau County has eighty tax collectors, seventy-seven of which are elected each year. Three collectors are elected for a term of two years. The collectors have no offices other than their private homes. "In my School District, which is the Fifteenth School District of the Town of Hempstead, the school tax collector for the collection of that tax, receives from \$2,000 to \$2,800. In this connection I would say that the County of Nassau appropriates approximately, \$1,000,000 for school purposes every year. There are sixty-three school districts in the county, fifteen incorporated villages, and three towns." It is just that multiplicity of officials and assessments which it is aimed by this amendment to do away with. It seems to me that that multiplicity makes for extravagance and inefficiency and it seems to me that if the Constitutional Convention will adopt the proposal of the Tax Committee on this particular subject, leaving it to the will of the people of the several districts to adopt or reject the law provided by the Legislature as they see fit, these districts as they gradually become accustomed to this system of doing their business will attain greater efficiency and economy.

The President — The gentleman's time has expired.

Mr. Lincoln — Well, Mr. Chairman, I would like to say just a word more. I have taken this up with the gentlemen from Westchester and from Nassau, who are particularly interested, and also with the distinguished gentleman presiding over the Committee of the Whole this morning who spoke against the amendment recently, and all the gentlemen I have mentioned have stated that they are entirely satisfied with the proposal as contained in this amendment.

The Chairman — The gentleman from Erie offers an amendment which the Secretary will read.

The Secretary — By Mr. Lincoln: To insert after the word "boundary" the following, "no such tax district larger than a town to be established until the law providing therefor shall have been adopted by vote of a majority of the people voting thereon in such proposed district at an election for which provision shall be made by law."

Mr. Barrett — Before I begin to speak, briefly, on Sections 2

and 3 of this proposed amendment, which should be taken up together, I want to say that I am in favor of the amendment proposed by Mr. Lincoln, and opposed to the amendment proposed by Mr. Griffin, for the reason that Mr. Griffin's proposed amendment would nullify the provisions of Sections 2 and 3 proposed by the Tax Committee. In the first place, Mr. Chairman, there are two matters or rather situations, or conditions which, if there were no others, justify and make necessary the adoption of the provisions of Sections 2 and 3 of this proposed amendment. The first of these conditions is the necessity for the improvement of the system of taxation or lack of it which exists outside of the fifty or more incorporated cities in the State. The other is the necessity for the improvement of the condition of the system for the assessment of personal property. In neither of these conditions has the Legislature the power to make the improvement as now limited by the provisions of the Constitution. As I have noticed from looking at the list of delegates, something more than two-thirds of the whole membership of this Convention is made up of residents of cities, and it may be slightly presumptuous to assume that they do not know the cumbersome detail which is provided for the assessment and collection of taxes in that part of the State outside of the cities and I am just going to briefly describe that situation. While the cities, by reason of the broadness of the charters that have been granted by the Legislature, have a reasonable, logical, economical and fairly convenient system of taxation — I am not speaking with regard to the payment of taxes but the method by which you have an opportunity to pay them — in the parts of the State outside of the cities there is a cumbersome, expensive and inconvenient system. Outside of the fifty or more cities in this State, there are 1,200 townships or towns, as they are called in the Constitution, several hundred villages and several thousand school districts. Now, for the purposes of taxation for State, county and town purposes, the basis is the town. As has already been briefly referred to, the assessment of the town is made by the assessors of the town. The assessment of the villages within the town is made by the village assessors and the assessment for the school district within the town is made by the Board of Trustees. Now, briefly, for an illustration, I want to take my own county of Westchester, with which I am reasonably familiar, and one township within it. The assessed valuation of the county of Westchester is about \$400,000,000. Just about one-half of that is within the cities of Yonkers, New Rochelle and Mount Vernon, leaving \$195,000,000 worth of property within nineteen townships. Now, within those nineteen townships the property is assessed in each township by three assessors. The

twenty-four villages within those townships each have their own board of assessors, varying from one to four. There are 178 school districts, including high school districts, each one of which has its own board of assessors. Each of these districts, 230 taxing districts, has its own taxing officers and they have power to levy their own taxes and collect them. So that we have some 228 or 230 districts. Now, taking one town in particular, the town of Greenburgh, which adjoins the town in which I live, they have an assessed valuation of \$46,000,000 in that one township. They have five villages. In the township government they have enough school districts to bring it up to twenty-seven taxing districts. The average annual budget to run all those budgets is over \$1,000,000. They are assessed by twenty-seven different sets of assessing officers and collected by twenty-seven different sets of collecting officers. Now, what we attempted to do in the county of Westchester, which has been referred to here briefly, to overcome this situation, was to have a special tax act passed, which provided that for each township the Board of Assessors of that township should make an assessment roll which should be used for all purposes within that town, doing away with all the assessors except three for the town. And also doing away with all the collecting officers except the collector of taxes for the town, who collected not only for the town but for all the villages and all the school districts.

Now, let me stop right there, in connection with the describing of that system, to say, for the purpose of allaying the fears of those who think that something improper might happen in regard to the carrying out of the provisions of this Constitution, if adopted, that this act was put into effect after a sentiment which was carefully discussed by the board for five years. There was some talk that it would be unpopular among those people who were legislated out of office, but it was the most popular measure, strictly non-partisan measure, that has been put through for a long time, and there was very great disappointment when the Court of Appeals decided, as I shall tell you in a moment or two, that it was unconstitutional. Now it proceeded first this year to put that plan into operation. There was one assessment roll; there was one collector. The assessors, instead of working on fees as they had done heretofore, had their salaries fixed by the town board. They made the assessment for all the subdivisions within that town and collected the taxes at a salary fixed by the town board. The collector sat from one end of the year to the other in a place designated for that purpose, so that a man who had taxes to pay in any part of that town could go, just as they do logically and conveniently in a city, and have one place to pay his taxes

and know when his taxes were through and paid. Now it is suggested that all this proceeding is based upon a tax map, which is a highly important part of the proposition. This assessment was based on the assessment roll and the taxes were laid against the property and not against the person, which every lawyer who has had trouble with this proposition will recognize is a very advantageous proposition. Now then while this plan was working along successfully one of the villages in the town of Pelham — the town of Pelham adjoins the city of New York, as some of you know, and is made up entirely of three villages. They tested the constitutionality of this act in a proceeding which went to the Court of Appeals under the last subdivision of Section 2 of Article X, which says that any other officer not provided in the Constitution shall be elected or appointed by the electors of the district for which he is elected. In substance,— for my time is brief,— the Court of Appeals decided that a village collector, though not named in the Constitution, was a constitutional officer because duties had been conferred upon him by the Legislature previous to the amendment of the Constitution of 1894. So that our whole act fell to the ground but we discovered enough benefit in the working of it to see the advantage of such a proposition; and, such a plan, as I have already stated, carrying out such a plan, is now prohibited by the Constitution. Now I do not refer to Westchester county alone in the hope that something should particularly be done for one county. I simply say this, that in some of the counties now — Nassau county, tried the same thing except they put theirs on a county basis, and that falls within the same prohibition — I simply say this that the larger counties now, and a good many other counties within the next twenty years, will certainly find it expedient and necessary to have that prohibition removed so that the Legislature can provide intelligently for the assessment and collection of taxes in the larger and more thickly-settled sections of the country. And, not only that, but such a system is a very great improvement upon the system we have now. Now the amendment by Mr. Lincoln changes the proposition of the Tax Committee so that a tax district shall not be created larger than a town without the consent of the people affected. I hope that some time or other it may be possible to make the county the basis of assessment. I believe that is the logical thing and it is one of the logical answers to the defects and vices which arise out of the system of equalization which has been referred to by Senator Griffin. I think I have covered sufficiently that proposition to make it clear that, without some amendment of this character, there can be no, as I believe, systematic and economical and logical assessment for the purpose of

real estate, and that the Constitution should be amended in that particular. Now, Section 2 does remove the restriction provided in Section 2 of Article X of the present Constitution, and Section No. 3 limits that by providing that assessment districts shall not be larger than the town unless it is voted upon by the residents of the larger districts.

The Chairman — Under the rule, the gentleman's time has expired.

Mr. C. A. Webber — I trust that the gentleman's attention will not be called to that. Mr. Barrett is the most interesting person to speak on this subject on the floor of this Convention.

Mr. Tanner — I move the gentleman's time be extended.

Mr. Parsons — Mr. Chairman, I ask unanimous consent that he be allowed to proceed.

The Chairman — Is there any objection? Hearing no objection, the gentleman will be allowed to proceed.

Mr. Barrett — Thank you, Mr. Chairman, and I will limit that to five minutes and stop inside of that time, so that I can answer the gentlemen's questions if I am able to do so. I referred briefly to the question of personal property. Under the ruling of the Court of Appeals, the local assessor is guaranteed the right to assess personal property. Now this provision, this proposed amendment, makes it possible for the Legislature to provide without restriction for the assessment of personal property. I think that that is a logical proposition and a proper one. The local assessors, as constituted at present, I don't think I go too far when I say that they do not believe in the assessment of personal property if they can find any reasonable excuse for getting out of it. In fact, I remember pointing out to a local assessor that he could very properly assess personal property. He said he did not believe in personal taxation, in taxation of personal property; that if a man had managed to save any money which was not included in his real estate, that he should not have to pay taxes on it. This proposition as proposed by the Tax Committee leaves it entirely with the Legislature to make such laws as they may see fit for the proper assessment and taxation of personal property. I want to say that the working of that plan as proposed in Westchester county, which was proposed and in operation until it was stopped, that the system of abolishing fees for local assessors and collectors and appointing officials to work at a fixed salary was found to save expense and to be very much more satisfactory all around.

Mr. Olcott — I offer the following amendment. I simply ask the Clerk to read it and I have nothing to say.

The Chairman — Mr. Olcott presents an amendment. The Clerk will read.

The Secretary — By Mr. Olcott, to amend General Order No. 48, as follows:

Page 2, line 17, strike out the period at the end thereof and add the following: "operating in two or more counties and not wholly within a city".

Mr. McKinney — During the debate upon this article last week, some critical attention was given to the second sentence, in Article II, Section 2, which reads as follows: "The Legislature shall prescribe how taxable subjects shall be assessed and provide for officers to execute laws relating to the assessment and collection of taxes; no provision of any other article of this Constitution to the contrary notwithstanding". I refer particularly to the last clause of that sentence. If I am not mistaken, there is pending a motion, or a tentative motion, to strike out this clause.

The Chairman.— May we have just a little better order?

Mr. McKinney — Mr. Chairman, I earnestly hope this motion will not prevail. If this clause is stricken out it will accomplish the defeat of the fundamental purpose sought to be achieved by the Committee on Taxation in this article. This sentence, or rather this clause of the sentence, goes to a very good purpose, and it is the earnest opinion of the committee that without this provision, the reforms sought to be accomplished cannot be constitutionally carried out for this reason: Section 2 of Article X, generally known as the home rule clause, gives to local communities and towns, as the section is interpreted in the Court of Appeals, the right to have local or town assessors assess local real estate. If that provision remains in the Constitution, as it seems that it will, and this provision prevails which permits the Legislature to provide for other assessors to assess real estate, we shall have two conflicting provisions in the Constitution. The door is then opened wide for all sorts of construction, and it was the sincere opinion of the committee that the older and more particular provision would probably prevail in case the court decided there was a conflict between this provision and the other. We have abundant precedent for such a provision as this, excepting any other part of the Constitution and providing a rule of construction. In a number of amendments submitted to this Convention much the same language is used, and I think the criticism of this form of constitutional expression is hardly justifiable. This morning I noticed a provision in the proposal reported by the Committee on Industrial Interests, the proposition introduced by Mr. Parsons, which begins, "Nothing contained in this Constitution shall limit", and so forth. We have in the Constitution, as at present in force, a provision in Article IX, Section 1, relating to the

workmen's compensation, a provision that "Nothing in this Constitution shall forbid", and so forth. It seems, therefore, Mr. Chairman, to be a well-recognized form to provide against the possibility of conflict and to make clear the interpretation meant by the committee. I therefore hope that the amendment will not prevail and that the purpose which is sought to be accomplished by the committee and the end it intends to reach in permitting larger tax districts will be permitted to prevail.

Mr. Olcott — In answer to Delegate McKinney's suggestion as to the provision in the second paragraph, "Any provision of any other article of the Constitution to the contrary notwithstanding", I have just a word to say. It seems to me that a *reductio in absurdum* can easily be applied to that. Suppose some other provision of the Constitution that we adopt, either here or hereafter, contains that same clause. Which are you going to give preference to? As I said before, and I want to be very brief here, it does not seem to me to be precise constitutional language. It should be subject to a Committee on Revision in this body itself, taking the care that there is not anything to the contrary notwithstanding in the remainder of our deliberation. But I leave the question with the Convention, not feeling that it is highly important, but wondering what would happen if any provision which could, by any reasoning, govern the same subject also contained that same clause.

Mr. C. A. Webber — I want to say in reference to that provision that is just being discussed, that our Committee was just as reluctant as anybody on this floor to insert such a provision as that, but it was only after hours and hours of discussion that we reached the conclusion that there was no language that we could use that would meet the situation; and we not only discussed that in our Committee for three hours, but we discussed it informally in the Committee on County Government, and they also informally agreed that no other language could be selected. We wanted, if possible to amend the clause that was offending, which is really in section 2 of Article X, but we found it was impossible to do that by simply providing that a village assessor should not be a constitutional officer, and it was after discussion pro and con, from every viewpoint, that we adopted this language, considering all the things that might be urged against it as constitutional language. We went through the entire Constitution with a fine tooth comb. There is nothing that we intend to effect or that can be effected by this language, except in Section 2 of Article X, and we, therefore, unanimously, as a Committee, ask that that language stand because we are afraid that if you touch that language at all you will defeat the entire purpose of these two sections. Now, you

have got to a situation where the little petty village assessor is blocking all improvement in the way of taxation in this entire State, and surely when that village assessor was made a constitutional officer over a hundred years ago there was no intention that he should block the improvement of the system of taxation in this State. And no thought that it would ever be held that because of his being a constitutional officer nobody could do anything to prevent him from being such. Now, that is all we are seeking to do, is to wipe out that little picayune officer, not absolutely, but permissively, if the people want to do it. We are not insisting that that shall be done, but if the people themselves want to create a larger district than the village district then we want them to have the opportunity of doing so. Now, there is another provision that is also attacked by Mr. Griffin, and that is the amendment in reference to the word "how" in line 2, page 2. Now, that word was selected after a great deal of consideration. After consulting every possible definition of words we could find, we unanimously arrived at the conclusion that there was only one comprehensive word that could meet the situation that we want to meet and that was the word "how," and we are very insistent, therefore, that that shall not be stricken out. It is not open to criticism. It is the most comprehensive word that can be used and we intended in using it that it should be comprehensive, so that there could not be any question that the Legislature had full control of that subject.

Mr. Austin — I have just a very little which I wish to say about this amendment. I have already said something, and I want to repeat it here. It is impossible for me to believe that a deliberative body of this character is going to insert into the Constitution as many legal platitudes as are contained in this proposed article. Is it possible that we are going to say solemnly in the Constitution that no property shall be exempt from taxation except as expressly provided by law?

Mr. M. Saxe — That section has been passed upon by the Committee of the Whole.

Mr. Austin — It is still here. If those two sections are to be considered,—

Mr. Parsons — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Parsons — Section 1 has been passed upon and is no longer of discussion. We are on sections 2 and 3.

Mr. Austin — Are we on sections 2 and 3?

The Chairman — The Chair understands that section 1 has been passed upon and that sections 2 and 3 are now under consideration.

Mr. Austin — It is impossible for me to believe that this Convention is going to solemnly provide that taxes shall be collected for public purposes only, when everybody knows, as I said before, that it is the conceded law of every State in the Union. It is impossible for me to believe that this Convention will provide that the Legislature shall provide for the supervision and review of the equalization of assessments, because that has already been done under the provisions of the Tax Law which are subject to amendment and change by the Legislature at any time. Now, as to the real merits of section 2, I recollect very well that the Chairman of the Committee on Taxation said once before that the purpose of it was to permit the assessment and taxation of personal property by State authorities. As to that, I only wish to say this: Never in my experience has the State taken to itself the function of assessing and collecting taxes upon property which was formerly within the jurisdiction of localities, that in the final analysis it did not retain a large part of the tax; and, therefore, for that reason, I am fundamentally opposed to a provision giving the State department power to collect, or to assess and collect the personal taxes, because I know that before they get through they will take a large part of them. I am opposed to it further for this reason. We all know that the evil which is sought to be reached is the failure to tax intangible property. Now the State Tax Commission in my judgment, when it comes to exercise this power, will reach not the property that now escapes taxation, but it will reach the property of the farmer; it will make him return his churn and his live stock of all kind; it will make a man who owns a Ford automobile pay personal tax upon that; it will make a man who owns a little store and has a little stock of goods,— it will make him return all those goods; and that is the stuff that this Tax Commission, or whatever department succeeds to its power and functions, will reach, and not the large mass of property that now escapes taxation. I am opposed to that principle. And now, I want to say just a word or two about the amendment introduced, I don't know by whom. I did not catch the name, but which provides that the public service sentence of the third section shall not apply to corporations operating only within the counties or within the limits of a city. Now everybody,— before anybody says it, I want to repeat what everybody knows, I am an attorney for a public service corporation. I am, however, not influenced in what I now say by that fact. Not one partic'le. I say that that proposed amendment is absolutely unjust. If you are to adopt the principle of allowing the State Tax Commission to assess all the property of public service corporations; if you are to permit it to have the vast army of employees that will be necessary to assess

these properties and to split the assessment up into piecemeal and to apportion to each town and each village and each tax district, whatever it may be, that part of the entire value of these corporations which that particular district is entitled to assess or to levy a tax upon,— if you are going to do that with one class of public service corporations, you ought to do it with them all, because if the principle is good it should apply to every one of them. Let me give you a couple of instances of how this thing will work out. Right here in the city of Albany there is a little road that runs from Albany down to Hudson. It is called the Albany Southern. It operates in the counties of Albany, Rensselaer and Columbia and under this provision it would have to be assessed by the State Tax Commission, while the United Traction Company, carrying very many more passengers, operates only in two counties, and would be assessed by the local authorities of those two counties. There is a little Ulster and Delaware Railroad down in my own district. Operates in three counties, would have to be assessed by the State authorities; while the great big International Railway of Buffalo, which carries more passengers in a day than the Ulster and Delaware does in a year, would come under the jurisdiction of the local authorities. Now, I say there is absolutely no justice in that proposition at all. I do not favor, myself, the proposition to place the Public Service Corporations under the jurisdiction of the Tax Commission at all. But, I am saying nothing about that. I simply say that it is unfair to pick out one class of public service corporations and put them under its jurisdiction and place the others under the jurisdiction of the local authorities.

Mr. Leggett — So far as the constitutional limitations are concerned, the Tax Committee when it met for its deliberations found that there were really only two provisions of the constitution that affected taxes at all. One of them is Section 24 of Article III, which is not in any way at all affected by this tax article, and the other is Section 2 of Article X, the home rule section, as it is frequently called. But the entire purpose,— I won't go so far as to say the entire purpose, there may be some detail in which that, would not be entirely true— but the main purpose and effect is to protect the Legislature from the petty trammel of Section 2 of Article X. As has been said by the delegate from Westchester, that provision prevents the Legislature from permitting or authorizing the assessment and collection of taxes in school districts, in villages, in towns, by any method differing from the present one. The present tax officers in those small divisions are protected in their functions by that section of the constitution and nothing can be done to change it. Now, to those who live in cities, I want to give a slight illustration of a situation which cannot be remedied

as the constitution stands to-day. A few years ago it became my duty as attorney for a client of mine to pay taxes on a little piece of property in the village of Kenmore, Erie county, seventy miles from where I live. Along about the first of January, when the State, county and town tax is payable, I wrote to the town collector, addressed the letter to Kenmore, New York, asking him to send me the amount of those taxes. After waiting a good many days my letter came back undelivered. I put myself upon inquiry and I found that Kenmore was located in the town of Tonawanda, and inferred that possibly the town collector might get his mail at some other post-office. I wrote then to him at Tonawanda. A good many more days elapsed, but after a while I got an answer from him giving me a statement of the amount of the taxes with 5 per cent. added. The thirty days under which it was payable with 1 per cent. added had elapsed. There was nothing left for me to do but to pay the taxes with the 5 per cent. penalty added, although I had made the inquiry promptly. He is under no obligation by law to answer questions so far as I can discover. In the spring when the village taxes became due I wrote a letter to the village collector of the village of Kenmore, making inquiry, again asking the amount of those taxes, asking that it be sent me so that I could pay it. I did get an answer from him, but I did not get it until after the thirty-day time had expired and I had to pay those taxes with the 5 per cent. penalty added. About the first of September, when the school district taxes became due, I wrote a letter to the school district collector of the village of Kenmore, making the same inquiry, and I had just the same result. I paid the taxes after the thirty days, because I did not get the answer until after the thirty days had expired, and the 5 per cent. penalty was added. That same year it was also my duty for another client to pay taxes on some property in Eugene, Oregon, 3,000 miles away. In the month of January I wrote a letter, addressing it simply to the collector of taxes, Eugene, Oregon. As soon as time enough had elapsed to bring back an answer by mail I got an answer from the sheriff of the county, sending me a bill,—perhaps that long and that wide (indicating), with a statement in detail of the state taxes, the county taxes, the city taxes, the school taxes, all extended in detail and summed up, with quite a little bit of information as to the method of inquiry which you should pursue in order to get any further detailed information. Among other items of information contained on that bill was one that taxes were payable in the month of February, and that such bills as that could be obtained at any time after the first of January in each year. I sent him a check for those taxes and asked him to make a note to send me that bill every year when those taxes became

due so that I might pay them promptly and avoid the penalty. For nine years I received a bill from the sheriff of that county between the 1st and 10th days of February in every year — no penalty added — giving me the opportunity to pay in that way. I understand that that is substantially the method pursued to-day in the cities of this State. I know it is so in the city of New York. But just contrast the businesslike, simple method of paying taxes in a locality 3,000 miles away with the exasperating delays and annoyances experienced in paying taxes in the little village in my own State only seventy miles away from where I live. Now it is to avoid — to make possible — there is nothing mandatory on the Legislature in this tax article. They are merely permitted and authorized to change a state of affairs like that. Down here in Westchester county, as you have heard from my friend from that county, they have tried it — the people down there want to get rid of these petty little trammels, as I call them, that are made necessary by the present provision in the Constitution. Now, up in my county, up in Allegany county, no one has awakened to this situation. I do not expect to get anything out of this for my own county, but I think it would be very wrong for this Convention to deny the people that want this relief; they should have it when they come to this Convention and make their case clear. I want they should have it myself. I feel that it is no more than their due. The other day some gentlemen in speaking of this proposition deprecated the adoption of this article on the ground that it was in opposition to the home rule principle. I think that was due to a misapprehension. The fact of the matter is now right here: In the county of Westchester they want to make a change and adopt a more businesslike way of assessing and collecting taxes. They had an act passed applying only to their county. I understand that such an act was passed applying also to Nassau county. Now, it seems to me that it is pursuing the very essence of home rule to give them a chance, when they want to do that thing, and that is all that is implied in this article. It is simply taking the bonds off of the Legislature, so that, if the Legislature sees fit, it may grant them that relief, and I think, as I said, that it would be a shame for this Convention to deny people such a relief as that when they ask for it properly.

The Chairman.— The gentlemen's time has expired under the rule.

Mr. Mereness — Mr. Chairman, I understand from a statement by one of the members of the Committee on Taxation that the whole Constitution of the State of New York has been raked over with a fine-tooth comb, and that the only things they can find in the Constitution that renders it necessary to use language which

has been criticised in the second section are the home rule provisions of section two of article ten of the Constitution, which have been in every Constitution of the State of New York since it was organized. Now, then, it seems to me that if any attack is to be made upon the home rule provisions of our Constitution, it ought to be made directly and not by indirection. Everybody in this Convention knows that the Committee on Taxation has ample authority, under the rules of the House, to itself propose to change the language of Section two of Article X of the Constitution, and they have had all summer to do it in. I do not know why they cannot do it yet, and if a majority of the delegates in this Convention are in favor of striking out the home rule provisions of Section two, Article X of the Constitution, let them do it directly. Don't let them do it in a round-about way. Let us meet the issues squarely. And if this provision, which is as dear to the people of these neighborhoods and small communities as the air which they breathe, is to be changed, in the spirit of progress of the present day, let us do it with our faces to them, instead of in the way proposed. Now, I do not know that I can see any particular objection to authorizing the Legislature to provide, if we have a few counties in the State whose troubles have become so burdensome that it is necessary to change the organic law of the State,—to take care of those troubles. I don't see any particular objection to enabling the Legislature to allow the people of those counties, if they want a change, to have it by means of the referendum. The only objection that I have to that is that I do not like the word "referendum" and never did. I don't believe that the people of the State of New York will ever adopt the practices of California, Oregon and Oklahoma, where the referendum is the great panacea for all the ills of life. If the Convention is bound to give the State Tax Department, under the leadership of our gallant Chairman of the Committee on Taxation, authority to tell the people of every community in this State how much their property is worth, let us give it to them with an open hand, and don't let us do it by introducing in the Constitution provisions in one section that say so and so, and then putting provisions in some other section of the Constitution which say that that other thing doesn't mean anything, this is what counts. It seems to me that the proper course for the Committee on Taxation, and for this Convention, if they are ready to strike out the home rule provision for towns and villages and give it to cities, is to do it with our eyes open and with our faces to the voters.

Mr. L. M. Martin — I suppose that the matter of taxation, the question of who shall pay taxes in this State, will always be an unpopular proposition. If I was to write a heading for this

article, it would be "the power of taxation, as far as individuals are concerned, will always be surrendered if we can get away from it." The question is, shall we deviate from the settled policy of the State by adopting this new provision? I am quite in sympathy with those gentlemen who live in populous counties like Westchester and Nassau when they desire a change in their method of taxation. I am not in sympathy with the learned and distinguished gentleman from New York, Mr. Webber, when, in pronounced and vigorous terms, he said we should do away with the little village assessors, because the learned gentleman from New York knows nothing about it. I ask him what business is it of his if we people in our villages assess ourselves for local improvements and the support of our local officials, and the State tax budget is not based on it at all? I am afraid, gentlemen, that you are going far in doing away with the great principle of home rule and home taxation that was so eloquently described here the night we celebrated the magna charta. Now I am quite willing that counties which are distressed, like Westchester and Nassau, should have some necessary relief. I am quite willing that this experiment should be tried, but I am absolute'y opposed to the astute gentlemen who represent our tax board in this State when they come before us with a mandatory provision and claim, through other gentlemen who do not seem to know what they are talking about, that it is merely permissive. I ask the learned gentleman who has just taken his seat when in the English language the word "shall" was ever permissive? Now I want these people to understand just exactly what they are voting for. Section 2 of your article says: "The Legislature shall provide for the supervision, review and equalization of assessments." That is not assessment of personal property alone but all real property. To "supervise" means just what we want these gentlemen to do. "To review", we are perfectly willing they should. "To equalize", means to reassess, and that may be proper. I find no fault with that. But I call the gentlemen's attention up-State to the fact that Section 2 of this article gives these men the mandatory right to step into every household, to step into every farm, every store in the State of New York and assess every dollar's worth of personal property therein through the agency of the State Board of Taxation, and that is a right which I should hesitate to give even that august body of men. Why, they say, they won't do it. Were you ever in this chamber and had a department bill? Why it strikes a chill to the heart and down the spine of every legislator—the department bill must be passed—and so you are vesting in the State the power through the Board of Tax Commissioners to assess every dollar's worth of property in the State. Very well;

that is Section 2. Now I call your attention to the fact that the Lincoln amendment is the only thing that saves this arbitrary action on the part of the State Board of Tax Assessors from compelling the assessment of real property and that amendment only goes to town assessors, it does away with village assessors, as my friend says, and compels the formation of districts in counties greater than towns on the vote of the people. So that we have here a comprehensive tax scheme if Mr. Lincoln's method is adopted compelling the assessment of personal property through the agency of the State Board, creating county districts of assessors if the people vote for them and doing away with village assessors entirely. That is the proposition. Now I subscribe, as far as I am concerned, to this proposition if the Lincoln proposition is passed. I am quite willing that there should be an improvement in taxation. I think some day our county will come to it, for we are not in the deplorable condition which Mr. Lincoln mournfully said. I don't ask him to criticize Oneida county. We can shed our own tears on this very spot and do not ask for any outside tears over our remains. We do not demand that this House shall do away with our local assessors and when we do we know enough to come here and ask you to do it. So I urge if you are going as far as this, to vote the Lincoln amendment which leaves us to choose whether we want this activity in our midst or not. But I call attention to the fact that if you do vote the Lincoln amendment it probably will do away with the village assessment.

Mr. Wiggins — When the President of the Tax Commission explained this Proposed Amendment as having such plain sailing and going along so nicely it made me think of the story which they tell of the Irish tenant about to be evicted from his farm because he had not paid his rent. He decided that the only way to avoid being ejected was to go down to the bush with a shotgun and wait for the landlord to come along. He was due every night at seven. He walked down at seven, and he and his wife stole up behind one of the bushes. It got to be half-past seven and the landlord had not appeared and finally he turned to his wife and said, "I hope nothing has happened to the poor old man." Now apparently that is what the members of this Convention thought this morning on coming here for the purpose of voting on this amendment. The real force and effect of it has been stated by Mr. Martin and Mr. Mereness. It means that there is to be centralization in Albany, the control over the taxing departments of the entire State. It means that we will eliminate the Board of Taxation in the various towns and in the various cities. Mr. Martin has pointed out, and the language has seemed to me to permit of no other interpretation, that the Legislature shall estab-

lish tax districts. Now I understand that it may, but hereafter the Constitution provides that they "shall" establish districts and when they have established a district it may be a county, there is no way of changing it except by going back to the Legislature again.

Now, Mr. Lincoln's amendment, which is designed presumably to cure this evil, does this: It permits the cities and the counties to control the country districts. In the county where I live there are three cities. We have a majority of the inhabitants of the entire county and if we people in those three cities decide that we wish to control the taxing power of the real property in all of the counties, if we want to take it from the towns and villages and present taxing boards, we will get up a referendum and propose it to the people of that county and we will take away from the people in those various towns and villages the right to tax their own property. It is striking at the principle of home rule which Mr. Mereness refers to and gives a great power to some of the cities of this State which they do not all have. Living as I do in a city it may be said that I should not speak that way but I speak for the minority in the county when I say that that bill should not pass in that form and the amendment of Mr. Lincoln should not prevail. The minority lives in the towns and villages and when we propose a referendum and we people carry it through they will lose all control over that which has been nearest and dearest to their hearts from time immemorial, the right of taxation. Now on the subject of personal property — and before I finish on the other I want to say this, that the last feature of the amendment seems to provide that the State Board may empower the State authorities to order a review or reassessment. It means that we have been called to Albany —

Mr. M. Saxe — A point of order, Mr. Chairman: We are not discussing that section, we are discussing Sections 2 and 3.

Mr. Wiggins — But I am talking about it, Mr. Chairman.

Mr. M. Saxe — Mr. Chairman, I press my point of order. We are not discussing that section. We are discussing Sections 2 and 3.

Mr. Wiggins — The wounded bird always flutters when it is hurt, and for that reason I go back to the assessment of personal property.

Mr. Westwood — Are you wounded or Mr. Saxe?

Mr. Wiggins — It looked to me as if he was.

The Chairman — The gentleman refuses to be interrupted. He will proceed with his debate.

Mr. Wiggins — I am very sensitive. I go back to the assessment of personal property, and we wish to vest by this amendment

that control and power in a centralized body at Albany. If Mr. Saxe would remain at the head of that department I should not have any fear because I have found his generous impulses permit him to treat all of the people of the State alike. But you must have in mind this fact, you people who come from the country, and that is that under this amendment they will have, and perhaps there may be some argument in favor of that proposition, the right to tax mortgages and bonds and securities and the vast sums of wealth which many men have — I say nothing against that — but it also carries the right to go down into the scarified hills of Orange county, where they have hard work to get the money to pay these taxes, and say to the man who has a little store there, and a few cattle on those hills of Orange, and the man who has some live stock and horses, “We will put you on the assessment roll at Albany, and when they assess the property at Albany that is where you must come in order to institute certiorari proceedings,” and it means that if a man finds that his goods are unjustly taxed he must hire a lawyer to come here to Albany to protect his interests. It means there will be vested in Albany the right to tax all the personal property of all of the people of the State, including the stores, the merchandise within the stores, all of the small storekeepers all over the towns and villages of this State. I am against any proposition which attempts to centralize that power at Albany and take away from the local assessors the power they now have to assess property in their individual localities.

Mr. M. Saxe — I merely want to call the attention of the gentleman who has sat down to the last report of the State Board of Tax Commissioners, of which I was not a member. Middletown assesses at 35 per cent. of the real value.

Mr. Wiggins — I merely want to say that I hope the Chairman of the Tax Board will remember that, when he passes upon the affidavits which I filed for equalization of corporate property at Orange, and that he will remember to put it on the roll at 35 per cent. in accordance with the admission he now makes.

Mr. Low — Mr. Chairman, I have no idea of standing in this Convention in favor of home rule for cities and of denying home rule to villages in the other parts of the State, and therefore it seems to me timely to suggest at this point in the debate that the home rule amendment submitted by the Committee on Cities recognizes fully the authority of the State to establish general policies affecting all of the cities by laws that affect all the inhabitants of the State or by laws which affect all the cities of the State or all the counties, so far as the counties within the city of New York are concerned. Therefore what we are discussing here is not a denial of home rule to the villages or the cities or to any

part of the State; it is the establishment of a general principle, a general policy, which under the home rule amendment submitted by the Committee on Cities is retained in the case of cities as a right of the State, and has been suggested as something which should be retained, I think, by every home rule amendment that has been proposed. I am, however, concerned as to section 2 of this article as it bears upon Home Rule for cities, not to speak of other parts of the State. I would like to ask the chairman of the Committee on Taxation to what extent this phraseology would effect the right of cities to appoint their own assessors, to pay them what they please, to devolve upon them such duties as the city authorities may desire. The language to which I refer is this: "The Legislature shall prescribe how taxable subjects shall be assessed and provide for officers to execute laws relating to assessment." Does that phrase providing for officers to execute laws relating to the assessment and collection of taxes interfere with the authority and power which cities now enjoy, and I assume other localities, either to elect or appoint those officials?

Mr. M. Saxe — In answer to the distinguished chairman of the Committee on Cities, I will say there is absolutely no such intention in that language. Undoubtedly, if this article becomes part of the fundamental law, the Legislature would provide that the cities might through their charters provide for their local tax officials, both assessors and collectors. The only reason the language is put as broadly as it is is to make it plain that the Home Rule provision of Section 2, Article 10, so far only as "officers charged with duties relating to the collection and assessment of taxes" is concerned, is abrogated. By the third section, it is perfectly clear, as the chairman of the Cities Committee must see, that with respect to assessors of real estate they must be locally appointed or locally elected. In other words Section 2 of Article 10 is practically re-enacted in Section 3 of the Tax article. It does not stand to reason that the Legislature is going to appoint a separate set of tax officials so far as the assessment of personal property is concerned except for that class of personal property which they seek to reach directly. It does not follow under this article, as some of the gentlemen have most incorrectly stated on this floor, that the State will assess personal property. It will assess certain classes just as it does to-day, but this permits the State to do what it is doing to-day without violating the spirit of the Home Rule clause which the State has been doing by reaching personal property through exemption from local taxation. That is the vice which this Convention is blind to and which will come back to strike us time and time again; and we are making it possible to live up to the spirit of Home Rule and throw down

the words which do not mean anything and which make it impossible to develop an equitable system of taxation for this State, and that is all there is to it. Perhaps I feel rather warmly about it, for I have given attention to it for twelve years. These things are not my ideas, but the consensus of opinion of the best economic authorities in this country. Before me I have volume after volume of the proceedings of the National Tax Association which has made a study of local taxation, a body of men who are studying this subject exhaustively — some of them may be called doctrinaires, and some of them may be college professors, but they are American patriots, they love the State of New York, such men as Mr. Seligman of Columbia University, Mr. Young of Cornell — they are not seeking and they are not standing for something new that is going to harm the State of New York, or the people in it, or any of the districts in it, but they are simply advocating what they see to be the right course in the development of taxation. Now, the State of New York has fallen away behind. Let me show you the facts, gentlemen. Let us look them squarely in the face. We are the richest State in the United States, without any question, yet according to the Census Bulletin, issued by the Department of Commerce, let me just show you where we stand as compared with some of the other states. I read from *The Assessed Valuation of Property*, the Department of Commerce, as of the year 1912, and I am dealing only with personal property because so much of a drive has been made on that this morning: The State of Massachusetts assesses over one billion dollars of personal property; the State of Ohio assesses \$2,145,000,000; the State of Indiana, \$676,000,000; the State of Illinois, \$470,000,000; the State of Michigan, \$429,000,000; the State of Missouri, \$481,000,000; the State of Kansas, \$517,000,000, and the State of New York, \$447,000,000. The idea of it! And let me show you how you disclose the situation in your own publication in this State. The highest amount of personal property the State of New York ever assessed in its own history was a little over \$800,000,000. Now, see what happened when you pass the mortgage tax law. There is a law which produces an annual revenue of three and a half million on a one-half of one per cent. basis. That indicates that there are \$700,000,000 that never is reached.

Take the secured debt law, which has yielded a revenue of \$4,000,000, indicating that there must be on a five mill basis at least \$800,000,000 of secured debts that never were reached because in all the history of the State the highest amount of personal property you ever had was a little over \$800,000,000. Now all we are going to do is to make it possible to have proper tax laws to reach the property that can pay taxes and that ought to pay

taxes. Why, it makes me laugh when I hear the arguments here that the farmers ought to be raised. Why, the poor farmer is the man who has the burden of taxation, because — you gentlemen apparently are blind to the situation — it is the poor farmer that is going to be relieved, except perhaps where he is not paying his taxes on his land. Here is a State that has no tax maps. When we tried to amend the tax law so as to provide for the compulsory use of tax maps — as they do in Westchester county — they have that law there — there was great opposition here and there because of the cost. “Ah,” said one fellow, “I will tell you why we don’t want a tax map. I am assessed for twelve acres of land, and I have got forty.” And that is the situation all over the State of New York. Now, I am not alone in this. Just let me read to you a few words that come from others who are in close touch with this subject, and I call the particular attention of the minority in this body to this letter from Commissioner Sullivan, a member of the State Board of Tax Commissioners, who recently went out of office; and I ask the minority to pay particular attention to this. He says: “When at Albany last week I learned with great pleasure the fact that the taxation article proposed by the Committee on Taxation had been reported favorably and with practically unanimity. I am deeply interested in the adoption of this article, and believe that it is essential that these principles be written into our new Constitution, if we are ever going to require personal property to bear its proportionate share of the burden of taxation. It has been my experience, in visiting the various counties of the State, that in a large percentage of the tax districts there was very little effort made to place upon the assessment roll the personal property not exempt from taxation. Much of it was machinery and intricate equipment, which was almost impossible for the average local assessor to justly appraise. In small municipalities, very often the employees, stockholders and friends of a large manufacturing corporation controlled the political life of the village, and it is impossible to compel the local assessor to assess such property, either real or personal, at its full value, or at the same rate that other property is being assessed in that locality. To my mind, there will never be an efficient administration of the tax law until some central body appraises both the real and personal property of public service and manufacturing corporations, at least. Take the Woolworth stores, scattered all over the State, receiving fire, police and other municipal protection from the city or village where they are located, and not paying a cent of local tax for the protection and benefit they receive. The vast lumber companies, having millions of dollars’ worth of lumber stored in their yards at Tonawanda, being Buffalo or Canadian corporations

with their principal office in Buffalo or some Canadian city, have the same protection from the city of Tonawanda, and make no contribution towards the expense of the local government. There is very little question in my mind but what during the next twenty years it will be necessary to revise the whole scheme for the assessment of certain classes of corporate property within this State, and it can never be efficiently done by adhering to this time-honored custom of leaving the whole duty of making these appraisals in the hands of local assessors. What does the average farmer, cross-roads merchant or horse doctor know about the cost of reproduction of a great railroad system that runs through his town, the cuts, tunnels, bridges, viaducts and various intricate features of construction that can only be properly appraised by a competent engineer? In view of the fact that the Court of Appeals has decided that the various features of construction of a railroad cannot be assessed wholly in one town, but must be considered as a part of the whole railway system of that particular company, how can local assessors, in making these assessments, familiarize themselves with the whole system of a railroad which runs through their town, and properly and justly distribute these values along the whole line?" To that I call the attention of the gentlemen who do not like the provisions of this article that the property of public service corporations may be assessed by a central body. "It has been my experience while a member of the State Board of Tax Commissioners, that the vast majority of assessors throughout the State would welcome the enactment of a law which would relieve them from the assessment of properties of which they know nothing, and about which it is impossible for them to learn anything with any reasonable degree of investigation. They know about the local conditions, and take pride in assessing the local real property, such as is used for homes, farms and stores and the like. But it is a source of great annoyance to most of them to attempt to assess railroad or manufacturing property." And he goes on in the same strain, but I will not burden you with it. But I also have here a statement from my two colleagues on the State Taxation Commission, former Senator Thomas and Judge Knapp. They are up-state men; they came to this business of taxation practically new men. Within the last few months they have been in close contact with fifteen hundred of the assessors of the State; they have visited thirty-two counties. Listen to what they say, bearing in mind that with them it is a matter of novel impression. Here is a statement signed by both of them: "Section two of the proposed article on taxation provides that the Legislature shall prescribe how taxable subjects shall be assessed, provide for officers to execute the laws relating to the

assessment and collection of taxes, and that the Legislature shall also provide for the supervision, review and equalization of taxes. This article empowers the Legislature to make the assessment and collection of all taxes on personal property a State function.

"Section three of the proposed article, however, provides for the assessment of real property, heretofore locally assessed, by assessors who shall be elected by the electors of the districts within which such real property is located, or appointed by such authorities thereof as shall be designated by law, and this restores, so far as the assessment of real property is concerned, the principle of home rule to the localities. To sum up: Under this article, if enacted, real property will continue to be assessed by the local authorities, though the tax district may be enlarged, not beyond the limits of a county; personal property may hereafter be assessed by the State authorities. This provision seeks to carry out the methods which experience has shown to be the most efficient for purposes of taxation. The fundamental principle of taxation is equality of the burden. 'Equality in right, in protection, and in burden is the thought which runs through the life of this nation and its constitutional enactments from the Declaration of Independence to the present hour.' So speaks Mr. Justice Brewer of the Supreme Court of the United States (170 U. S. 301). The main cause of the dissatisfaction with the present system of taxation in this State is this: Men everywhere know that they are not being treated equally in the matter. There can be no peace in tax affairs so long as one citizen knows that he is paying upon an assessment twice or three times as large as that which his neighbor pays upon property of substantially the same value. Now this arises largely from causes closely connected with the method of local assessments. Local assessors are poorly paid and in many instances are not competent to do their work. But to a far greater extent local assessors do not dare to assess fairly, either at full value or as between individual citizens, because of local conditions and influences. Local conditions in various parts of the State which were found on the official visits of the Tax Commissioners this year are deplorable. Commissioners Walter H. Knapp and Ralph W. Thomas, of the State Tax Commission, have visited thirty-two counties of the State within the last three months. In each county they conferred at length and carefully with the assessors and the supervisor of each town. As a result of such investigation it is their best judgment that the assessed valuation of real property in the State varies in the different counties all the way from 95 per cent. of its full value to 25 per cent. of such value. Yet the statute is specific and mandatory. It says: 'All real and personal property subject to taxation shall be assessed at the full value thereof,' and in token

of his compliance with the statute, in the verification at the end of each assessment-roll, the assessor swears that he has assessed all the property on that roll at its full value, tho' he well knows that he has not done so. So great is the power of local influence that honest men all over the State, to their extreme dislike, feel compelled to commit deliberate perjury in performing their official duties as assessors. And if this is true of the assessment of real property, far more is it true of personal property. Of real property the assessors can form some sort of estimate of its value. It is tangible; it is concrete; he can gain knowledge of it through his physical senses; and if, in spite of all this, such rank injustice in assessment results, what shall be said of the assessment of that form of property which is intangible; which is invisible and on which no line can be gained to give the dazed and wondering searcher any clue as to its real worth? All experience shows that while Home Rule gives the locality control over assessments of such property, the price paid by the taxpayers for such control in the inequality, futility and injustice of the assessments — in the complaints, the grievances, the indignation of the citizens who have been discriminated against, is far too high a price to pay. The best rule, whether Home Rule or other, is that which gives uniformity to the burdens of government between localities and municipalities, which places all sections of the State under uniform rules of procedure, and which deals out something remotely resembling, at least, substantial justice between man and man. The entire historical trend in this matter of taxation is all toward uniformity of tax laws, and the trend certainly has a sound foundation. In the first place it is the more efficient method. Take a case: The centralized tax law in Kansas was adopted in 1907. In that year the assessed valuation of personal property in the entire State of Kansas amounted to only \$78,854,269. In 1914, under that law, the assessed valuation of personal property in that State had increased to \$525,780,250 — an increase of more than 566 per cent. Or, again, the centralized tax law of the State of Ohio was enacted in 1910. In a single year under that law the assessed valuation of personal property in the State of Ohio increased more than four hundred and fifty-two millions of dollars, an increase of over 79 per cent. in a single year; and in 1914 the assessed valuation of such property in Ohio had risen from \$566,945,843 in 1910 to \$1,905,000,000, an increase of more than 236 per cent." In the State of New York we have decreased and we are going on decreasing.

Mr. Cu'linan — Mr. Chairman, will the gentleman give way to a question?

Mr. M. Saxe — I appreciate that I have been imposing upon the courtesy of the Committee.

The Chairman — The Chair was about to inform the gentleman from New York that he has exceeded the time limit under the rule by seven minutes and we still have Section 4 of this article to consider and we are to take a vote at one o'clock.

Mr. M. Saxe — I can inform the Chair that if Sections 2 and 3 are passed substantially as they are, with the Lincoln amendment which is acceptable to the Committee, Section 4 will be withdrawn. The gentleman in whose interest it was inserted is here.

Mr. Ryan — Mr. Chairman, I move that additional time be extended to Mr. M. Saxe to debate the tax article. As taxation is one of the most important subjects before the Convention, the speaker should be given sufficient time to debate the question.

The Chairman — Unanimous consent is asked for granting Mr. M. Saxe leave to proceed with the debate. Is there any objections? Hearing none, the gentleman may proceed by unanimous consent until some member stops him.

Mr. Cullinan — The figures that you have called to our attention are very instructive. I would like to ask, however, if you are in possession of any facts as to the States which make the large returns, like Massachusetts, Iowa and other States, so much larger than our own — if they have upon their statute books statutes providing for taxation upon mortgages, upon inheritances and other forms of personal property, to this end, that we might be informed as to whether or not, equitably, personal property does, in fact, pay a tax in this State although not in the form in which it is reported.

Mr. M. Saxe — Let me say, in answer to Mr. Cullinan, that the figures which I gave him from the United States Census report are those based on the ad valorem assessment of personal property. Now, outside of the state of Michigan, I think, none of the other states that I mentioned assess mortgages separately as we do, but they assess other property, not included, which practically offsets all that in proportion. I have confined the figures to the property that is assessed on the ad valorem basis, that is, directly on value. Now even the state of Michigan which has a mortgage tax exactly like our own, returns more personal property than the State of New York. And, as a matter of fact, if you will look at Judge Woodbury's figures — he made a study of the effect of the mortgage tax, I think it was about 1910 or '11, which showed that around 1901, '02, '03, and '04, a few years before the first mortgage tax in 1905, and a few years after the mortgage tax, 1905 and 1906 — he found that the variation in personal property was about the same. In other words, the mortgage tax did not affect the ad valorem assessment of personal property whatsoever. As for the secured debt tax, why, we know that we never reached secured

debts before. They were very rarely taxed. Now, then, if I may continue —

Mr. Stanchfield — I call your attention to the last sentence of paragraph 3, which reads as follows: "The Legislature may, however, provide for the assessment by State authorities of all the property of designated classes of public service corporations." Now, I assume that means that the Legislature may by some sort of enactment classify public service corporations. Take for illustration the county of Broome, of which the city of Binghamton is the county seat. Traversing that county are the trunk lines of the Lackawanna, the Erie and the Lehigh Valley Railway Companies. Now is it to be understood from that language the Legislature may confer upon the State the authority to go into the county of Broome and assess the value of the property of those three railroad corporations as against the right of the local boards of assessors of Broome county? Let me follow that with one further inquiry. And if that be true, would the State authority assume the right to assess the valuation, say, of the Delaware and Hudson, all the way from Binghamton to Albany, through the counties that it traverses, and assert the right to apportion, as between those counties, the share of tax that would result from the entire assessment?

Mr. M. Saxo — Mr. Chairman, in answer to the inquiry, I would say, frankly, that it would be possible. Of course the assessment would have to be equalized to compare with the average rate of assessment in the localities. But let me point out to the gentleman this very interesting situation. That is exactly the case with the special franchise tax. Now see what the Court of Appeals had to do in the Metropolitan case, in 174 N. Y., to sustain the constitutionality of the special franchise tax. Remember, under the special franchise tax law, special franchises are made real estate. And under your home rule theory the local assessor had the constitutional right to assess it. It was real estate, local real estate, right there within his jurisdiction. But the Court of Appeals saw that it was impossible to have the local assessor intelligently handle that class of property and so, in order to make a wise but illogical decision, they got around it by saying, "Well, this is a new kind of real estate. He had nothing to do with assessing this kind of real estate and therefore this law does not take away from him the Constitutional function given to him under the home rule provision." Why place the highest court of this State in a position to make decisions of that sort in order to sustain good administration in taxation? Note what this article does. It makes it possible to develop sound and proper economic systems of taxation without forcing the Court of Appeals to construe the law around hedges and over fences in order to uphold it.

Now, if I may be permitted, Mr. Chairman, I just want to read one thing, in conclusion, from the statement of Commissioners Thomas and Knapp.

Mr. Stanchfield — I do not desire to interrupt the gentleman; if he has the slightest objection I will refrain. There are a number of delegates around me who are interested in this line of inquiry. When the State does assess, say, the Delaware and Hudson from Albany to Binghamton, and the counties across which it runs, will the State say what proportion Broome county has of the tax collected and what proportion Otsego county shall have?

Mr. M. Saxe — Undoubtedly the Legislature would so provide by statute. It is done all over the country. They have that system in New Jersey. They have it in other States. But mark you, Mr. Stanchfield, the time is coming when that is not going to be satisfactory, when the United States Government will have to come in and assess railroad systems as a whole, in order to get a proper method of taxation. That is what is going to obtain next. Don't you see, on the one hand, you are regulating your public service corporations; and, on the other hand, you are piling up all sorts of taxes on them by all sorts of officials? Well, have they got to pay those taxes? Who has got to pay them? Why, the users of the service. That has got to be considered in fixing rates. Why not have a simplified system? That is what this provision makes possible. Under this amendment you can have one tax perhaps on their earnings in lieu of all other taxes, which would make a very light burden in comparison, and then the people could get the benefit in the rate. There are some people who are so firm in this idea of rate regulation that they believe in exempting public service corporations from taxation in order to have very low rates, but that would be unfair to the other people in the community who do not use the service. So it is right and proper that they should be taxed, but the tax ought to be simple. It ought to be certain. It ought to answer all the four maxims of Adam Smith and it can't be done under our complicated system to-day.

Mr. Dykman — Is it not the intention of this provision, and would it not necessarily result in any legislation, that there would be one tax assessed to take the place of the gross earnings tax, the special franchise tax, the personal property tax, and the real estate tax?

Mr. M. Saxe — Mr. Chairman, the answer to that is, certainly not. Such a thing is possible under this system, but we do not say that that is the method that they will adopt.

Mr. Dykman — If there is to be bunched together the gross earnings tax, which is measured by gross earnings; the special

franchise tax, which is practically measured now by earnings, net earnings; the personal property tax and the real estate tax, must not this one unified tax be a tax measured by earnings?

Mr. M. Saxe — No, Mr. Chairman —

Mr. Dykman — If that follows, and since the State now takes the whole of the gross earnings tax now levied, must not the Legislature say how much of this unified tax shall be taken by the State and may it not take a grossly disproportionate share?

Mr. M. Saxe.— In answer to the gentleman, if he will just cast his eyes on lines 15, 16 and 17, on page 2, he will see that it reads, "The Legislature may, however, provide for the assessment by State authorities of all the property of designated classes". The assessment of the property — that does not mean that they are tied up to any system of taxation. While the word "assessment" is used in its broadest sense, the purpose is to have one authority determine the base upon which the tax shall be levied. You might give it all to the localities, but you want one authority to fix the base, because so much is involved in the properties of these public service corporations and it can better be done by central authority than by authorities scattered all over the State with no co-operation between them under the law. Now I just want to read, in conclusion, if I may be permitted, Mr. Chairman, what Commissioners Knapp and Thomas say in their signed article. "Over against these results", referring to the results in Ohio and Kansas, "note conditions in the State of New York. In 1898 the assessed valuation of personal property in this State outside of the city of New York was \$221,515,750. Since that year under the system of local assessment there has been a steady and continuous decrease, until to-day the assessed valuation of personal property in the State outside of the city of New York is only \$99,454,895. Meanwhile the city of New York shows no such decrease. In 1898 the assessed valuation of personal property in the city of New York was \$326,293,743. In 1914 it was \$325,421,340. It should be borne in mind in this connection that the laws exempting personal property apply equally to the entire State." Let me say to you one word more, because I happened to speak about the city of New York. Out of the city of New York is coming \$17,000,000 a year from the income tax. Now look at what is withdrawn from the pockets of the people of the State of New York! One-third of the income tax of the United States is being paid by the city of New York to-day. In conclusion, gentlemen, just this thought. The Committee has carefully considered and studied this proposition. This is no makeshift. This article is the result of a great deal of thought and deliberation, and I think, in view of the fact that the article was reported by the committee, 15 to 1,

it ought to receive the support of the Committee of the Whole and of the Convention. I wish to say that the Lincoln amendment is acceptable and that the Griffin amendment is not acceptable, and, with the understanding that section 4 is withdrawn, no other amendment will be acceptable to the committee now.

Mr. Ostrander — I have worked three months with this Committee on Taxation. I have listened to a lot of very learned gentlemen in taxation problems. There is a national association of tax men, some of them in the employ of telephone and telegraph companies and others who have connections with other men who have to deal with large problems of taxation. Once a year they gather somewhere in the United States. This year they are gathering in California. Someone back home is footing the bill. These gentlemen, and I have the greatest respect for their learning and for the mass of figures which they can assemble in regard to taxation — I want to tell you what we have had the most insistent demand for from these taxation experts; that is the section that the power of taxation shall never be suspended nor contracted away, that taxes shall be imposed by general laws and for public purposes only. There seems to be a great desire to write that in the Constitution of every State of the Union. Now, I appreciate the situation of the gentlemen from Westchester and I believe, if we could have a system of county districts instead of the present township districts, and have it satisfactory to the people involved, it would relieve a great many embarrassing positions and would improve the tax systems in certain counties. I perhaps yielded a very reluctant consent in the Committee, because we must consent to things sometimes, to these provisions 2 and 3. I have felt, as I believe many members of the Committee have felt, that there were things about those sections like the drummer's overcoat in his bill of expenses; it was there but you could not see it. I don't know what it all means. Since I have listened here to the debate this morning I have rather come to the conclusion that perhaps even the provision for the county vote on the question of a county system might be open to very grave objections and abuses. So far as the principle of allowing any State board that has ever been made to do the taxing for the rest of the State, I must register my protest against that, if I happen to be the only man who does it.

We have heard a great deal of the perjury and almost murder that is committed by local assessors, but it seems to me that the men who call the local assessors perjurers because they have not got the local valuations up to a point which the State authorities think they ought to be, should stop and consider the fact which has been eloquently dwelt upon here that the State of New York which pays income taxes to the amount of \$17,000,000 only has four hundred and odd million dollars of personalty upon its rolls.

Now, somebody has been neglecting his duty just as badly as the local assessors. I don't want to call him a perjurer, I don't want to say that he is remiss in his duty, but this great fact remains that there is one law that the State department always observes — and by concentrating attention upon this one I don't mean to say that there isn't any other — but this one I have always noted is carefully and scrupulously observed. It is not on the statute books, but it is this: "Remember now Thy Creator in the day of thy youth." And I venture to say that if at any time when the head of a State Tax Department departs from that law, he will see the shadow of his successor coming across the door. Now, gentlemen, we may be stepping out of some hole by adopting these new provisions. We may also be stepping into something else. I don't know. I confess that, having given the most diligent attention, after months of debate, and listening with careful ears to the gentlemen who appeared before the Committee, I am not able to say whether we have laid an egg or not. I don't want to be charged with disloyalty to the Committee, but I do want to register my protest against any taking away of authority from the local assessors. Bad as he is, incompetent as he is oftentimes, I don't know whether we are going to get beaten in this horse trade or not. Unless we are pretty certain that we are going to do something better, I think we ought to be pretty careful. I think it might be well enough to think twice on this proposition, that it might be well for us to rise and think it over again before we finally adopt it.

Mr. Stanchfield — I think by common consent the Convention will admit that the Committee on Taxation has laid an egg. The serious inquiry here is as to whether or not so much time has not elapsed as to render the egg unduly malodorous. If Mr. Ostrander, whose abilities we all appreciate, has given to the consideration of this amendment a month of his time in committee, and has listened to the opinions of men learned in that branch of economics, now asserts to us from that Committee that he is to-day in such a condition of mental dubiety as to render it necessary for us to do what he suggests, what are the rest of us to do? I will concede the efforts and the zeal of the Chairman of this Committee, for, upon many occasions, when I have been in this Chamber since the beginning of this Convention, he has either been upon his feet reading into this record the decisions of the courts of this State or else engaged in missionary work at every desk around this circle. I am perfectly free to say that I do not understand what this amendment means, and I think I may couple with that concession the affirmation that I have a great deal of respectable company; and if we are unable to understand it, why should we pass a law

which confessedly subverts and overturns the settled policy of the State? Now, that is all that there is to this inquiry, and it is upon that theory that I propose to be recorded in the negative.

Mr. F. L. Young — I am not uncertain about this matter. I know how to vote, and for reason. It has been stated here and has not been denied that the assessment of personal property in this State is a failure, and I know from my personal experience something else should be done. As to the assessment of real property, if you men want one assessment roll, one tax map, one set of assessors, one tax collector, one tax office, in each town, you will vote for this measure. If you want the old rule to go on, the innumerable assessors, the innumerable tax collectors, incomplete tax records, and uncertainty in all matters of taxation, you will vote against it. My vote will be for it, with the Lincoln amendment.

Mr. Westwood — I shall take only sixty seconds, and we have a hundred and twenty left. Chautauqua county was represented in this Chamber in the Assembly by a very learned, distinguished and patriotic man, some years ago, and I refer to Arthur C. Wade, whose heart is set upon the subject of taxation. He did what he could for the State to work out a solution for many of the taxation problems. I come from the same county. I hope that the time may come when we may have a systematic method of taxation. I see in this amendment proposed by the Committee a step in the right direction. I can see nothing harmful in it, and with the Lincoln amendment in it, I hope it may pass.

The Chairman — We will have to proceed to a vote, and the question is upon the first amendment of Mr. Griffin. The Secretary will read. The sergeant-at-arms will summon the members from the corridors. The Secretary will read the first amendment by Mr. Griffin.

The Secretary — By Mr. Griffin: Page 2, line 2, after the word "only" insert the following: "All valuations of property for purposes of taxation or assessment throughout the State and in every subdivision thereof shall be upon a uniform basis, to wit, the fair market value thereof."

Mr. Wickersham — Mr. Chairman, I rise to a point of order. It is utterly impossible to hear the amendment being read.

The Chairman — The delegates will please preserve order.

The Chairman — Those in favor of the amendment as read say Aye, opposed No. The amendment is lost. The Secretary will read the second amendment offered by Mr. Griffin.

The Secretary — By Mr. Griffin: Page 2, line 4, after the word "taxes", strike out the comma and the following words: "any provision of any other article in this Constitution to the

contrary notwithstanding". Line 6, page 2, after the word "supervision" insert the word "and". Line 7, strike out the words "and equalization".

Mr. J. G. Saxe — Mr. Chairman, I think these two amendments should be separated. I understand any member is entitled to a separation upon any question before the House.

The Chairman — The question is upon the first part of the amendment just read. Those in favor will say Aye, contrary No. The amendment has been lost. The Clerk will read the second part of the second amendment.

The Secretary — Page 2, line 6, after the word "supervision" insert the word "and". Line 7, strike out the words "and equalization".

The Chairman — Those in favor of the amendment will say Aye, opposed No. The amendment has been lost. The question now is upon the amendment offered by Mr. Wickersham. The Secretary will read.

The Secretary — By Mr. Wickersham: Page 2, line 4, strike out the words "any provision of any other article of this Constitution to the contrary notwithstanding".

The Chairman — Those in favor of the amendment will say Aye, opposed No. The amendment has been lost. The question now is upon the third amendment by Mr. Griffin. The Secretary will read.

The Secretary — Page 2, line 2, after the word "prescribe" strike out the following: "how taxable subjects shall be assessed", and insert in the place thereof the following: "the subjects of taxation and how they shall be taxed".

The Chairman — Those in favor of the amendment will say Aye, those opposed No. The amendment has been lost.

Mr. J. G. Saxe — Mr. Chairman, under Rule 27, we have to vote upon each section, section by section, and I suggest that when we finish the amendment to section two, we proceed to vote on the approval of section two as amended.

The Chairman — The Secretary advises the Chair that all of the amendments to section two have been considered. The question is upon the adoption of section two. Will the gentleman move the adoption of section two?

Mr. M. Saxe — I do.

The Chairman — The Chair understands that the first section has already been adopted, and this vote is now upon the motion to adopt the second section. Those in favor say Aye. All opposed, No. The section has been adopted. The question now is upon the amendment offered by Mr. Lincoln to the third section. The Clerk will read.

Mr. M. Saxe — I accept the amendment.

The Secretary — Page 2, line 15, after the word "boundaries" insert the following: "No such tax district larger than a town shall be established until the law providing therefor shall have been adopted by vote of a majority of the people voting thereon in such proposed tax district at an election for which provision shall be made by law."

The Chairman — Those in favor of the amendment will say Aye. Those opposed, No. The amendment has been carried. The question now is upon the amendment offered by Mr. Olcott. The Secretary will read.

The Secretary — Page 2, line 17, after the word "corporations" insert the following: "operating in two or more counties but not wholly within a city".

The Chairman — Those in favor of the amendment will say Aye. Opposed, No. The amendment seems to be lost. I understand that subdivision 4 of section 4 has been withdrawn.

Mr. M. Saxe — Yes, the section has been withdrawn.

Mr. Wickersham — I raise the point of order that we have not had the question on section 3.

The Chairman — The Chair wanted to know about the condition of section 4.

Mr. M. Saxe — Mr. Chairman, I now move the adoption of section 3 as amended.

The Chairman — Those in favor of the motion by the gentleman from New York will say Aye. Opposed, No. The section has been adopted. The gentleman from New York now moves when the Committee rise that it reports favorably to the Convention,—

Mr. M. Saxe — Mr. Chairman, I think we had better for the purpose of the record move that section 4 be stricken out.

Mr. Austin — Mr. Chairman, may I inquire from the Chairman of the Taxation Committee whether that motion contemplates that Mr. Smith shall withdraw his proposed amendment covering the same subject.

Mr. A. E. Smith — No, no.

Mr. Austin — Well, I think that should be considered.

Mr. A. E. Smith — In relation to the question of the gentleman from Greene, I would like to say the reason why I consent to the withdrawal of this is that in the form in which the Committee put it out it means nothing. I haven't any use for it; if it doesn't meet the purpose I intended it should serve, I don't want it. I propose to leave my amendment on the calendar until such time as I hear from the corporation counsel of Greater New York. I had been informed recently that the Department of Water

Supply, which started the agitation for this matter, had concluded among themselves within the last couple of weeks that they do not want it, and if they do not want it I am sure I have no use for it.

The Chairman — The question now is upon the motion of the gentleman from New York that section 4 of the proposal be stricken out. Those in favor of the motion will say Aye. Opposed, No. The motion has been carried.

Mr. M. Saxe — Mr. Chairman, I assume now that that carries a favorable report.

The Chairman — The gentleman from New York now moves that when the Committee rise it reports the proposal as amended favorably to the Convention. All those in favor say Aye. Opposed, No. The motion has been carried.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise and take a recess until half past two.

The Chairman — The gentleman from New York now moves that the Committee be in recess until 2:30. Those in favor will say Aye. Contrary, No. The Committee will rise and be in recess until 2:30 p. m. Whereupon at 1:10 p. m. the Committee took a recess until 2:30 p. m., Thursday, August 12, 1915.

AFTER RECESS—2:30 P. M.

The Chairman — The Committee will be in order. The delegates will take their seats and the Committee of the Whole will resume its work. The Secretary will read.

The Secretary — No. 786, General Order No. 25, from the Committee on Legislative Powers.

Mr. Barnes — Before taking up this measure for discussion I would like to offer an amendment from the Committee on Legislative Powers and Limitations, which affects the third paragraph of the proposal, in striking out the word "minimum", so that it will read "the Legislature shall not pass any bill to establish a wage for service to be paid to any employee by a private employer."

The Secretary — By Mr. Barnes: Page 1, line 10, strike out the word "minimum".

Mr. Barnes — Mr. Chairman, I should like, if there is no objection to the adoption of that amendment on the part of the Committee, to have it adopted before we proceed to the discussion.

Mr. Wickersham — Well, I object to that. I think we ought to have discussion of all the amendments

Mr. Barnes — All right, sir. This proposal is an endeavor to

read into the Constitution of the State of New York, to be established by the voters, a clear expression, now wanting, of the ideal of equality. In the aspiration to achieve this ideal, the American Republic was born, and to its cause its progress has been dedicated. The opposition to the ideal of equality has appeared in history both openly and in disguise. In America it is largely in disguise but not entirely so. Openly it is assailed as an Eighteenth Century episode not applicable to the enlightenment and conditions of our time. Thus through the power of flattery of the present generation and through appeal to materialistic class interest, the opposition has secured a large following. Its progress has been assisted further by the undeniable truth that the ideal of equality has not been attained and is to-day still a project. Because of its lofty character it is a natural prey to cowardice, ridicule or cynicism. It falters at the empirical test and is mowed down by the scythe of opportunity. But founded upon an immortal truth, it cannot be destroyed. Privilege is the antithesis to equality. Yet it is within the power of the Legislature at the present time to grant privilege in any case which does not involve a violation of the Constitution of the United States or the Constitution of the State of New York. Privilege is private law. It is, therefore, something granted to some that is withheld from others. Immunity is an excuse from penalty and it, consequently, is also unequal. Therefore, it must follow that, if we accept equality as the ideal we desire to attain, the Constitution of the State should be amended to contain a prohibition upon the Legislature to grant privilege or immunity. To advance this proposal would seem to close the argument and the case in its favor should rest at this point. The hour has come, however, when a proposal upholding the ideal of equality, which must be the ideal of any democratic state, does not necessarily find favor. Whereas, for many years this American ideal was universally accepted and progress towards its establishment in law and in the minds of all was being made; at the present time it is assailed as false and in substitution for it, it is proposed to establish a State that shall exist not as the necessary agent or servant of the people within its boundaries but as a power in itself to order the lives of the people in such manner as it wills, meaning in the first instance, perhaps what the majority wills, but in the second instance surely what one person wills upon the majority. There may be delegates in this Convention who fail to perceive that the legislation against which this proposal is aimed, is conceived in the desertion of the American ideal and in the establishment of what may properly be termed at the present moment, the Prussian principle. Such, however, is the fact. In life there is no static quality. There can be no rest. The life of a state, like the life

of a human being, either pursues relentlessly its ideal or forsakes it, temporarily perhaps, for another. A state must inevitably conform to one aspiration or to another. The concept of a democratic state where equality is the basis of all law is in direct antagonism to the concept of the autocratic state where everyone is made subject to what is declared to be the collective interest. From the latter tyranny there is no escape except through revolution. Faults are inherent in the former but they are lessened and cured by the development of the sense of individual responsibility, and of respect for the rights of others, so that as the years pass the ideal becomes nearer and nearer of attainment. The Democratic State is subject ever to reaction through failure of individuals to realize that the violation of the rights of one involves the violation of the rights of all. No matter how frequently an American State may fail in recognition of this ideal through administration or legislative conduct or even judicial decision — and Congress and State Legislatures and the courts have failed frequently — no consistent argument can be drawn therefrom that the idea should be abandoned and in its place established the only substitute, the tyranny and horizontal reduction in human quality of collectivism.

The time is peculiarly opportune for discussion of this entire matter. Whereas it is difficult to engage the attention of people to abstractions, at this particular moment the European War has transferred the subject from the field of abstraction to the domain of concrete application. On the German side in this conflict stands the Germanic State, as now established, without disguise and with precise definition, denying utterly the American theory of equality. On the side of the Allies there is a conglomerate amalgamation of all kinds of ideals united only in opposition to Germany as a war power. The splendid efficiency of the German war operations brings into bold relief the theory that the State should be all in all, that the individual exists only as part of the machine. But what does this involve? Shortly after the establishment of the German Empire, Bismarck in the Reichstag advocated the enactment of the kind of legislation that this proposed amendment to the Constitution of this State is aimed to prevent. In doing so he said: "Give the workingman the right to employment as long as he has health, assure him care when he is sick, and maintenance when he is old. If you will do that without fearing the sacrifice, or crying out 'State Socialism' as soon as the words 'provision for old age' are uttered — then I believe these gentlemen (the Socialists) will sound their bird-call in vain." The legislation enacted at that time in Germany was the pioneer in modern class legislation. During the last ten years it has been advocated in America and in some instances

adopted. A general program, however, never had been nationally advocated by a political party until the year 1912 when the Progressive Party was founded. Its chief sponsor said of its platform at that time, "It is a check to socialism and an antidote to anarchy," making the same prediction for the propaganda that Bismarck made to the members of the Reichstag. Bismarck's prophecy, however, has never been fulfilled. The Socialist-Democratic Party in Germany, has grown without recession from his day to the present time, until at the beginning of the war it was the largest single group in the Reichstag. To be sure Germany has become united and the Hohenzollern family firmly secured upon the throne. The revolutions and disturbances which covered the pages of German history until the supremacy of Prussia was established after the war with Austria, have ceased. This achievement may be admired or not. It certainly is not democracy and cannot possibly work out to the development of the person himself, but purchases his support as a piece in the mechanism of autocracy. The enactment of State socialistic legislation is not a check to socialism but prepares the mind for it. Two distinctly antagonistic ideals can never grow side by side within a State. One must fall. As it was said of the United States that this nation cannot exist, half slave and half free, so the principle of equality must suffocate in the atmosphere of legislation for privilege. The sea of experiment upon which we are asked to embark offers no possibility of return. It is not within the power of the human mind having secured largesse — something for nothing — not to develop further demands for acquisition without performance. The best ideals of socialism in its purity which declare that it will develop the highest qualities in individual life through the elimination of the struggle for existence by denying the right of acquisition, must be reluctantly dismissed as chimerical. The theory that if wealth should be collectively and not individually owned, the world would be a more beautiful place in which to dwell in harmony, peace and beauty, can only be a vision. There has been no experience upon which to base a conclusion that such would be the result. Confronting it, however, is the experience that, from time immemorial to the present hour, from the cradle to the grave, human instinct has demanded and insists upon ownership.

If this be true, and all evidence tends to prove that it is, and as State socialistic legislation increases inevitably the growth of socialistic methods of thinking, the certain destination involved in this kind of legislation will not be the attainment of the socialistic ideal, but the tyrannous autocratic State, not democratic in a single form, but established in the name of democracy. How

far we have departed in America from devotion to the ideal of equality, which is our declared aspiration, is demonstrated by the fact that those who would be benefited by the legislation which this amendment prohibits, have not advocated the passage of this prohibition. Were the spirit of equality alive, they would scorn the offer of a crutch on which to live at the expense of others. But, in fact, such expectant beneficiaries, instead of favoring this proposal, must be assumed to be against it, and would prefer instead of this prohibition a declaration that privileges without reservation should be granted by the Legislature. This further clarifies the situation in that it shows that the American ideal of equality is still a project and that powerful forces are at work denying the ideal altogether. You are all familiar with the speech of Mr. Lincoln at Gettysburg. You have heard it referred to as a masterpiece of expression. Its ideality has been commended without reserve, and yet I wonder if its real meaning has deeply sunk into the mind. These are his words: "Four score and seven years ago, our forefathers brought forth on this continent a new nation, conceived in liberty and dedicated to the PROPOSITION that all men are created equal. Now, we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure." The whole spirit of the address is contained in the word "proposition." In using it, Mr. Lincoln, with his apt discrimination was referring to the principle upon which the American Republic was founded as a project, not as established fact. In doing this he indicated not only his capacity correctly to diagnose the condition which confronted him but to prophesy its certain recurrence, which has arrived. To-day this principle, the ideal of equality to which the American Republic is dedicated is far from supreme in legislative halls. We do not even know whether it is the ideal of the people, because no expression of their will on this principle, unrelated to circumstance, has been made. Legislators are constantly beset by the advocates of organized privilege and must frequently act in behalf of some interest which, although a minority, is active, militant and punitive. The question is constantly asked: "Is there a demand for this?" and regardless of the merit of the demand, if it is insistent enough, the privilege is usually granted. This habit of mind is in direct violation of the development of the ideal of equality. Those who are American-born indulge in it hand in hand with those who have assumed American citizenship by choice. It would be ambitious to expect that every foreign-born citizen, who lived in the nineteenth century, or who derives his thought from the struggles for liberty in Europe of that century, by the mere transference of his body

across the water, had discarded the European method of securing concession from the monarch and had recognized, instantanously, that in becoming an American citizen, he should cease to refer to the Government as "They", but to speak of it as "We." On the other hand, it ought not to be ambitious to expect that the American-born citizen would be devoted to the ideal of his country.

The cynic answers me at this point and says that our vaunted equality does not exist. I have not declared that it does; but I hope by this proposal that something will be done to advance its cause. Among the pioneers, seeking liberty in America such as had not existed in the then known world, where superstition and autocracy had ruled hand in hand, who declared in Independence Hall in the City of Philadelphia, in 1776, that "Man has been endowed by his Creator with certain inalienable rights, that among these rights are life, liberty, and the pursuit of happiness, and that to secure these rights governments are instituted among men," were many owners of slaves. But their declaration prepared the way for the doom of the institution upon which they lived. In pursuing an ideal we must accept consequences. The apology is frequently made that under the conditions of life to-day, owing to the progress of science and invention, privilege must be granted to certain classes of individuals because individual opportunity has been, by the force of changed industrial conditions, automatically destroyed. The argument, however, does not apply in this case, even if it is valid. To provide for the health, safety and lives — in other words, what is called common welfare of all the members of the State, is not the same in principle as to grant privilege to a class of individuals. The extent to which the former policy should be carried is open to discussion. That laws of a century ago will not meet conditions of the present hour in America is denied by no one. The fact should not be lost sight of that "A man's a man for a' that," whether we have the United States Steel Corporation, or a smithy. The advancing of the proposal that changed industrial conditions have destroyed individual responsibility is an absurdity. Carried to the inevitable conclusion, this thought establishes a state responsible for the individuals within it, not a state composed of individuals accountable to themselves. Thus the State as an institution would provide not maintenance for dependents, not education for minors, but care of the individual grown to manhood. The line is crossed when regulative legislation takes the form of benevolence or privilege. When the citizen is taught that the State, as such, owes him something, the evil is accomplished. Such legislation injured but little those who are denied benevolence and privilege, but those who secure it gain a false

concept of life through the seal of approval placed by the State upon lack of responsibility to themselves.

There is a story that Socrates, when convicted by the Athenian State and condemned to death, was asked to name his own method of destruction. His reply was that the State should erect and maintain a house for him upon the Acropolis—than which no surer death could he imagine. I cannot believe that the American workingman—and this includes the foreign-born citizen who has made America his land by choice—desires to be reduced to a proletarian. In Rome the proletarian was exempted from military service, a privilege marking him for dishonor. It is contrary to the spirit of America; it is contrary to truth, that we should create in this country a class of proletarians. It is as true to-day as it was when the statement was originally made, that in America it is three generations from the plough to the millionaire, and three generations back again. I do not impugn the motives of those controlled by love of humanity who desire the material welfare of everyone, but mistakenly aim to involve the State in their philanthropy. It is a natural instinct in all. What an individual may do, however, is not a criterion for a State. The benevolent State inevitably breeds not men and women, but dependents. The oppression of crowd-thought, crowd-interest, crowd-demand for mediocrity might even lead the human race back to the protoplasm whence it emerged. The representatives of the people in the Legislature are chosen not to establish a new scheme of government; not for the purpose of deserting American thought; not to engraft upon an Anglo-Saxon civilization an alien theory; therefore they should be deprived, as they will be if this amendment passes this Convention and is adopted, of the power to impede the forward march of the American ideal. If, however, the sovereign people of the State of New York, after deliberation, desire to abandon the ideal of equality and establish in its place a State that is all in all, they and they only should take that responsibility. I am asking, if this Convention passes favorably upon this proposition, that it be submitted separately to the voters, that there may be a clean-cut expression for or against the principle of equality. If the voters should adopt this amendment, those who now crowd these legislative halls, demanding privilege for their clients, will come here in direct violation of the mandate of the voters. If the voters of this State should by disapproving this amendment, establish privilege as a principle every group will be justly entitled to call upon the Legislature to pass whatever they demand. The State of New York, in that event, although dedicated, as are the other States of the Federal Union, and the United States itself, to the ideal of equality,

will set its heel upon that aspiration. Because of its cowardice, it will become no longer an institution expensively established to protect the property, health, safety and lives of all the members of the State, but the means through which each separate collection of individuals within its confines may secure such privilege as in its weakness the Legislature fears not to grant. Therefore I ask this Convention to pass this amendment, believing that the voters themselves, who have no fear, will by their votes notify the Legislature that no privilege shall hereafter be granted to any class of individuals not granted equally to all the members of the State.

Mr. Wickersham — When the Revolution of 1848 had driven Louis Philippe from the throne of France, the poets and the philosophers of France united to form a constitution. Actuated by the same idealistic sentiments expressed in the interesting, scholarly and beautiful address to which we have just listened, they provided a Constitution and enacted laws suitable for a State in which human beings partook of the attributes of demi-gods rather than of men; and in three years Louis Napoleon ruled over France. The propositions advanced by the delegate from Albany embody principles which he has expressed frequently. They bubble up from the depths of an earnest conviction that we all recognize, and they are, I think, the by-product of that magnificent fight which he conducted three years ago,—four years ago, almost— which laid the American people under lasting obligation to him. But nevertheless, Mr. Chairman, they embody principles so impractical in the expression which he has here given to them, that their adoption would mean the destruction of this government as a practical vehicle for the conduct of the affairs of the Commonwealth. Let us see, Mr. Chairman, what it is that is provided by this amendment. It is proposed to prohibit the Legislature from passing any bill granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State. What is a privilege or an immunity? The phrase occurs twice in the Constitution of the United States and once in the Constitution of the State of New York. In the fourth article of the Constitution of the United States, it is provided that, "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several states," and in the fourteenth article it is provided that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Now, as so used, that phrase has received judicial construction which removes it from controversy. In the well-known decision, known as the "slaughter-house cases", Mr. Justice Miller describes the phrase in this

language: "The phrase 'privilege and immunity' is employed in the Constitution of the United States in the fourth article and in the Fourteenth Amendment to describe those privileges and immunities which are fundamental, which belong of right to the citizens of all free governments and which have at all times been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent and sovereign. 'What these fundamental principles are', Justice Miller said, quoting from Mr. Justice Washington in an earlier case, 'it would be more tedious and difficult to enumerate. They may all, however, be comprehended under the following general heads: Protection by the government, with the right to acquire and possess property of every kind and pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.' The Supreme Court of the United States has held that those constitutional provisions do not create the privileges and immunities of the citizens of the States, and in order to ascertain what it is which is comprehended in the grant in the Constitution of the State of rights and immunities we must turn to that instrument and to the decisions under it. The first section of the first article of the Constitution of this State provides that, "No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers."

Mr. Barnes — I should like to ask you if you clearly see the difference between the proposal that I make that the Legislature shall not grant privilege and that the people shall decide?

Mr. Wickersham — I perfectly understand the distinction. I perfectly understand. What I am endeavoring to do now is to point out what the meaning of the term is in order that we may then properly see the effect of the prohibition. I say the Constitution of the United States does not define what the rights and privileges of the citizens of the State are. It remains for the Constitution of the State to make that definition. A right is something which is inherent in every member of the State. A privilege is something that is granted by the State. A special privilege is something which is granted to some but not to all of the members of the State. When the gentleman from Albany seeks to provide that the Legislature shall not grant any privilege to any class of individuals, not granted to all members of the State, he seeks to so tie the hands of the Legislature that it may not deal with any class, no matter how exceptional their condition, no matter what their circumstances, which is not extended to every other individual in the State. To make a clear application, he would seek to prevent any law dealing with infants

which was not equally applicable to adults. Now, that would be to destroy the whole basis on which the American commonwealth has advanced since its foundation, of classifying laws for the purpose of meeting cases which fell within the classification. The right of the State to make such classification has been recognized from the foundation of the government, not simply under the provisions of the Constitution, to which we are now referring but in face of the prohibition in the Constitution of the United States against denying to any person the equal protection of the laws — and why? For the reasons stated by the Supreme Court of the United States in the very last case that came before it, "That to provide otherwise is to make government impossible." Let me read to you a brief extract from the last expression of opinion by that august tribunal which dealt with this subject. In the case of the International Harvester Company against Missouri, 234 U. S. 199, the plaintiff in error had been convicted under an anti-monopoly statute in the State of Missouri. It contended that the statute deprived it of the equal protection of the laws, because it did not apply to all who had labor to sell as well as to all those who had products of manufacture to sell and the Supreme Court dealt with that proposition in this language. It said: "The power of classification has a very broad range. * * * The very idea of classification is that of inequality, so that it goes without saying that the fact of inequality in no manner determines the matter of constitutionality. Therefore, it may be, there is restraint of competition in a combination of laborers and in a combination of purchasers, but that does not demonstrate that legislation which does not include either combination is illegal. Whether it would have been better policy to have made such comprehensive classification it is not our province to decide." The writer of the opinion dealt with the argument pressed upon the court that because all who had labor to sell, embracing nurse-maids and everyone else of that kind, were not comprehended within this law, it was a violation of the provisions against unconstitutional classifications. But the court said: "Such contrasts and the considerations they suggest must be pushed aside by government, and a rigid and universal classification applied, is the contention of plaintiff in error; and to this the contention must come. Admit exceptions, and you admit the power of the Legislature to select them. But it may be said the comparison of extremes is forensic, and, it may be, fallacious; that there may be powerful labor combinations as well as powerful industrial combinations, and weak ones of both, and that the law to be valid cannot distinguish between strong and weak offenders. This may be granted, (*Engel v. O'Malley*, *supra*) but the comparisons are not without value in estimating the contentious of

plaintiff in error. The foundation of our decision is, of course, the power of classification which a legislature may exercise, and the cases we have cited, as well as others which may be cited, demonstrate that some latitude must be allowed to the legislative judgment in selecting the 'basis of community.' " And he added, "Classification * * * may depend upon degrees of evil without being arbitrary or unreasonable. * * * If this power of classification did not exist, to what straits legislation would be brought." Now, Mr. Chairman, let us pass one moment from the second to the third provision of this measure: It proposes to forbid the Legislature to provide for or authorize the expenditure of any public money to be paid to any person except for materials furnished or services rendered upon employment by the State or civil division thereof or in recognition of such service. It would deprive the State of New York of the capacity to do justice for a wrong inflicted by the State. It would deprive the State of New York of the capacity to engage in any benevolent or charitable affair of any kind. It would deprive the State of the capacity to extend one dollar in preventing pauperism, in relieving the necessities of the aged, in assisting the necessities of those incapacitated by weakness from helping themselves. Sacrificing everything to the Moloch of the idea of equality it would, instead of preventing the State of New York from imitating the example of the State of Germany, erect the State of New York into as impersonal, as heartless a social organization as the worst enemies of Germany accuse it of being.

Mr. Barnes — I do not get that interpretation of the second paragraph, that it would prevent payment of any thing except a cash contribution. It is intended to cover a cash contribution only, by the use of the words "public money to a person" — not to an institution.

Mr. Wickersham — Well, Mr. Chairman, the distinction is more subtle than candid, it seems to me. "A person" includes a corporation, under all principles of the law of construction of constitutions or statutes, and if a Legislature may not authorize the expenditure of money to be paid to any person it surely cannot authorize the expenditure of any moneys to be paid to a hospital association or an eleemosynary association of persons erected by the law of the land into an artificial person with powers to carry out its beneficent purpose. It may be, Mr. Chairman, it may well be that the gentleman did not fully appreciate the extent to which this prohibition which he seeks to import to the Constitution would go. I fear he has been led on by this abstract conception in his mind to establishing that idealistic state of equality in which all men will be equally happy and equally busy

and all will enjoy an equal state of good health; under which nobody will need the beneficent assistance of the State or the individual. But, Mr. Chairman, we are dealing here with a Constitution for a State of 10,000,000 of living, breathing, suffering men and women, men and women who in strength and in health, in sickness and in need, must look to the organized agencies of society to help them from the consequences of failure in the struggle of life, whether that failure be the result of physical breakdown or other causes. Mr. Chairman, throughout the whole history of English-speaking peoples, the State has charged itself with the care of its sick and its poor. I know Mr. Barnes does not mean by this provision to tie the hands of the State so that for the future it may go forth impersonally, without pity, without capacity to help, and turn its stern back to all voicing of suffering, whether in its midst or elsewhere. Ah, Mr. Chairman, there are a thousand illustrations that rise in the minds that would be prohibited by this measure where every consideration and where every dictate of humanity would require the State to appropriate its money and take its action. What are you going to do in case of pestilence? What are you going to do in case of war? What are you going to do in case of any one of the thousand contingencies that arise in the life of a nation? Are you going to say that that our civilization is at an end? Are you going to say that we have lost all capacity to help ourselves? Are you going to say that unless we make an appropriation which goes equally to every man in this land, equally to every human being, the Legislature shall stand mute and powerless? I trow not. Those are some of the broad considerations which occurred to my mind as I read this act. It may be more carefully analyzed. Others will follow me who will point out more in detail, but here and now I must protest against seriously considering writing into the fundamental law of the State a provision that is in violation of every dictate of civilized, enlightened and progressive government.

Mr. Wagner — Mr. Chairman, like General Wickersham, I agree that nobody who has the pleasure of knowing Mr. Barnes doubts his absolute sincerity in the proposal which we have before us and his belief in its practical application to our government of the day. But sincere as he is, I believe that his proposal is absolutely out of harmony, not only with present day conditions of our government, but with the very theory of our government. I am not going to trespass upon dangerous ground by arguing with him the philosophy of government, because that is a subject rather profound and which he has studied a good deal more than I have, and I am sure I would be no match for him

on that phase of the subject. But I should like to merely face present-day conditions of our government and point practically to the character of legislation which Mr. Barnes proposed in his amendment to prohibit, and which has but recently been taken up by the legislative bodies of our State. Even when our government was first created, and I personally deny that if Mr. Barnes' theories of government were in harmony with those particular times — I say, even if they were in harmony, yet we have progressed so far in one hundred years, our wealth has become concentrated, monopolies have sprung up of our commodities, so that our government has had to actually restrain them, and where they have permitted them, to supervise them most strictly. Our population has changed from a rural population to an urban population. We have factories to-day employing ten or fifteen thousand people, housed together in one or two buildings, a condition which was unknown a hundred years ago. So that, whatever view we may take of this proposition, it is reactionary in the extreme and it is proposing to bring us back to a day which I think the majority of our people and the votes of this Convention will declare we are not willing to return to. All the progress which our government has made, all the happiness and enlightenment which our people are enjoying, they are enjoying as the result of the very character of legislation which Mr. Barnes now proposes to prevent legislators from enacting by a delegation of power from the people.

Mr. Barnes — I don't think that that is my proposal. My proposal is that we shall ask the voters of the State if they wish the Legislature to.

Mr. Wagner — Exactly. I say that you are proposing to prevent the people from delegating to the Legislature the powers which they have enjoyed.

Mr. Barnes — I am proposing to ask them the question.

Mr. Wagner — Yes, which is the same thing. We need not quarrel about words. The thought is exactly the same. In other words, the proposal we have before us now, in effect, would jeopardize the form or the standard of civilization which we have reached because of this humanitarian and social-justice legislation which has been enacted, particularly in this State and particularly during the last five years.

Mr. Betts — Are you afraid that the people, if they decide these questions for themselves, will destroy our civilization?

Mr. Wagner — No, but it is such a — no, I do not, but the object — I do not say the motive, but the effect will be to impede the progress which we have made by this delegation of power by submitting every particular measure, many of which I propose

to enumerate, to the people in each particular case to determine whether they want legislation of that kind or not. We are living under a representative government, Mr. Chairman, and in spite of what this Convention may do I think the people will see to it that we will continue to live under a representative and a people's government. Now; the first privilege — by the way, the word "privilege" is so far-reaching that, personally, I am not able to determine, and I don't know that anyone here is, just what sort of legislation under the word "privilege" we would be permitted to enact for the benefit of any particular class of the State. I listened with interest to Mr. Barnes' address; a good deal of it was rather profound for me, but out of it I could not gather that even he had an absolutely clear conception of just how far-reaching the word "privilege" would be in future legislation. Now he alluded to the legislation recommended by Bismarck over forty years ago, which was the workmen's compensation law, practically as we have it in this State to-day. Is there anyone here who would seriously propose to the people of this State that that law was an extraordinary privilege given to a particular class and therefore it is fundamentally wrong, and it should not be enacted by our legislative bodies? Why, it is too absurd even to suggest that this matter should be submitted to the people. If it were, they would, by an overwhelming vote, reject the suggestion of Mr. Barnes that that was a privilege to be enjoyed by a class of people to the detriment and to the deprivation of the rest of the community. It was in response to a tremendous sentiment in this State which the Legislature could not deny that this bill was finally enacted into law. And it has been referred to, not merely as a political measure, but as a religious measure, and in that is a significant phrase to show that we have not the cold, abstract government which Mr. Barnes would have us believe we have; we have an humanitarian government, whose first duty, in my judgment, is to make its people happy, and its prime duty is for economic and social justice. I am not going over the workmen's compensation act, but the Legislature — I think no one will argue that with me — the Legislature would be prohibited from passing or enacting such legislation as is now upon our statute books and which all, even those who originally opposed it, agree is one of the most humanitarian measures ever enacted, a monument to modern civilization, and yet it is a privilege under the meaning of the provision which Mr. Barnes proposes.

Mr. Betts — Was not that question submitted to the people and didn't they decide it the same as we propose to have this decided?

Mr. Wagner — It was submitted to the people because a previous act had been declared unconstitutional by the court in the

Ives case, not because there was any doubt in the mind of any legislator that the people were not in harmony with legislation of that character. It was to perfect our fundamental law so that it could be done.

Mr. Cullinan — Do you or do you not consider that act in the nature of class legislation?

Mr. Wagner — Yes, I do, in a way. It is class legislation under the definition which Mr. Barnes — under the word “privilege” as Mr. Barnes proposes to put it into our fundamental law, but still it is for the welfare of the State as a whole, and all the people of the State, from the purely political and sociological standpoint, and it has been so held by the court only recently. The Court of Appeals declared that law in harmony with our fundamental law only the other day, and if you read Judge Miller’s opinion in behalf of the court you will find that he says that, as to the economic justice of that act, nobody would even raise a question. He had not in mind the proposal before our Convention here. So that the courts have declared that, while class legislation, yet in protecting a particular class, we were protecting the whole State and thus it was in accord with our fundamental law. Now we had during the years from 1911 to 1914, I think, the greatest, most numerous and most effective advance in progressive labor legislation that we have ever enacted in the history of this State. It is agreed by all those who have followed the question of labor advance, social and labor legislation, that it lifted the State of New York from practically the last State in the Union in protecting our laboring people right up to the first place. Our State now stands first of any State in the Union in advanced labor legislation, an act of which we are proud, and yet the proposal before us now would have prevented this very beneficent legislation. By the way, let me show you how the courts of this State have changed in conformity with public sentiment and public demand, to show how impossible it is for Mr. Barnes to bring us back to the days gone by and to which we do not ever care or want to return. We have lifted the laboring man out of the time of industrial oppression, and we have lifted him up to be a dignified member of society. It was the unscrupulous — and they are in the minority — the unscrupulous employer who in the past exercised a privilege over the working classes and looked upon him as a chattel and as a vassal. And we have said the laboring man is not the property of the employer, but he is a dignified member of society entitled to equal protection and equal justice, and that is what we have accomplished by this labor legislation which was enacted in response to an almost unanimous sentiment in this State, so much that in both Houses of the Legislature all

of the bills were practically enacted by a unanimous vote. Now, speaking of the courts: About fifteen years ago the Legislature passed an act prohibiting the working of women in factories at night, and the law was contested, not by a woman who wanted to work at night, but by an employer who wanted to work her in the factory during the night, and he in behalf of these women went to the Court of Appeals and said this is depriving the woman of her liberty, and the Court agreed and said it is a deprivation of her liberty, and did not take into consideration the question of her health, and declared the law to be out of harmony with our fundamental law and a deprivation of her liberty given to her away back at Runnymede by the Magna Charta which King John was compelled to sign, although I do not think they had in mind then that that was the sort of liberty that they were seeking. It was a liberty, a deprivation from arrest. And yet our courts construed and brought that to bear in the most irrelevant fashion upon this question of night work for women. But we advanced in fifteen years,—although Mr. Barnes proposes to bring us back even further than that,—and what happened? A law was passed recommended by the Factory Commission, of which I had the honor to be Chairman, and Speaker Smith was the Vice-Chairman of the Committee—we passed an act again prohibiting the night work for women in factories, practically the same law that was declared fifteen years ago as unconstitutional and depriving this woman of her liberty; and what did the court do only about five months ago? They declared it constitutional and said it was a proper exercise of the police power of the State. It was a protection in which the State as a whole was interested in preserving the health of those women, so that our future citizens might be healthier and therefore better citizens both physically and mentally, absolutely changing the view of fifteen years ago. The court had grown in harmony with the sentiment of to-day, and they said it is not a deprivation of liberty, it is for her benefit that this law was enacted, and we are interested, and all of us in the State are interested in preserving not only the State as a machine, but the members of that State, in health and in happiness. And upon that theory we declared the law constitutional. That is how we are growing and you cannot get us to go back over a hundred years. Now, there were other laws which I know most of you are familiar with, which I do not care to go over now. I think, perhaps, rapidly, I might read a few of them which were enacted in those same years, all of which, by the way, which were tested by the courts, had been upheld on the ground that while they were class legislation, they were in the end for the benefit of the whole people of the State which was

really interested from the humanitarian standpoint in the welfare of our citizens, and right upon that point. Under the second provision of this proposal, Mr. Barnes would prohibit the contributions which we now make to the blind, not only for their education, but under a commission which is now in existence, they are permitted to make contributions to individual blind folks of our State, in order to give them the tools and machinery and other things to help them. The State in its humanitarian instinct to help the poor blind man make a livelihood for himself, makes this contribution towards his livelihood, and yet this is so contrary, according to Mr. Barnes, to the fundamental principles of our government that we must prohibit it. It will never be done. That is exactly what you are proposing in your amendment. Now you propose to prohibit the enactment of laws like widow's pension law.

Mr. Betts — You say that in this proposal he intends to prohibit it. Is not the proposal to let the voters say whether they will grant it or not?

Mr. Wagner — Yes, every time you want to give fifteen or twenty-five dollars to an individual blind man, submit it to the whole State, to determine whether or not that is right. Well, the cumbersomeness of the machine is proposed so as to make it as effective as possible to prohibit it, because the people are not complaining about this social legislation that we have enacted in the past. Who is it? Who is it that says this is wrong and that we must not any longer give this power to the Legislature; we must give it back to the people? Are the people complaining? If they are, just submit this question to them and you will hear their answer in no uncertain terms.

Mr. Betts — If the people are in favor of it, why do you object to submitting the proposition to them?

Mr. Wagner — I think I answered that. Sometimes if, by direct methods you cannot accomplish what you want, you put so many rocks in the path of the goal that you make it so difficult to reach it. Now, you want to stop it. I mean, that you — I don't question your motive; it is your viewpoint about government, but you are all wrong. You want to stop it, but you are afraid to say out and out that we will stop it. So you are going to suggest a machinery so cumbersome as to make it impossible to work and thus by indirection you accomplish what you don't dare suggest be done by direct method. Take our tenement house law. Why, would you suggest that we repeal the tenement house law and its beneficence in the city of New York, and yet you could not pass that under this proposal in my judgment. So of all this legislation for the protection of our children, and in our canning factories. Our commission went through the State and discovered

the conditions about this citizen whom we are told does not need protection. I think that if you would have gone through the State with us you would change your view, and say that he needs our protection. The child is the most valuable asset of our State, and yet you would prohibit by legislation our protection of the health and the future of that child. There are any number of laws here, fifty-two in all, which were enacted, none of which a Legislature this year, to which some of its leaders came with a message of reaction that they must destroy the so-called labor law, and yet in all, they dare not repeal one. They attempted to repeal, or rather to modify the law with reference to women working in our canning factories, and the public condemnation was so strong that they were finally defeated in their various schemes. But those who were back of that law were not backed up by any public sentiment, but the selfish interests, who want what? The liberty of the laboring people? No. The right to work them nineteen to twenty hours out of twenty-four; to despoil them for the profits in their pockets. That is what they wanted, and they were denied that, although the law did give a special protection to the women in these factories, so as to protect them against the unscrupulous employers, who our evidence showed — this is not guesswork, this is evidence upon the record, sworn to,—who made these women work eighteen and nineteen and twenty hours out of twenty-four for four and five weeks continuously.

Mr. Kirby — Do you know of a particular instance in which your commission referred in your report to evidence, to that evidence which was presented to the Legislature the last winter, in which it was represented in the report that one individual worked a long number of hours, when, as a matter of fact, two individuals' time was included on one ticket, and which was afterwards corrected by affidavit sent to your commission.

Mr. Wagner — No, there was not; there was no such evidence presented at all. There were any number of factories in which that sort of evidence was disclosed, and out of all the women we discovered through the record who had worked eighteen to nineteen hours a day, they secured the affidavit of one unfortunate woman employed in one of these canneries, who at the direction of her employer made an affidavit that there was a mistake; that while the record showed her working eighteen hours a day, it was a mistake; she was mixed up with another woman, with an entirely different name, a most extraordinary explanation to make.

Mr. Kirby — It was not another woman, it was two sisters of the same family. It might be well to state the facts.

Mr. Wagner — That is one case out of all the disclosures we made. I know that the cannery region is sensitive about the

criticism which we are directing against them, but public sentiment stopped you just the same. You cannot employ these women except for a certain number of hours a day, and you cannot employ them in a way which you propose by the laws attempted to be passed in this session of the Legislature. This is in the line of securing the liberty for these women and children. Let me tell you, so long as the subject is up, that a number of these cannery employers, and by that I mean the minority — the majority of the canners of our State are decent and respectable manufacturers who would not stoop to the methods of some of the minority which I have in mind, who, because of my personal knowledge, would stoop to the despoilation of the women and children of our State. What did they ask at the last session of the Legislature? Did they want all the laws, the restrictive laws with reference to the employment of women and children modified? No, but they wanted them wiped from the statute books, so that during the canning season there should be no law upon the statute books of our State regulating them in any way, shape or form; so that even children under fourteen years of age might be, under legal rights, employed twenty-four hours out of the twenty-four. In other words, they asked us to go back over a hundred years when it was unnecessary to have any regulations with reference to the employment of our labor. That is a demand which they constantly asked this Legislature to enact. But, I will leave the rest of the case to this Convention. Now, gentlemen, there is a Widow's Pension Law. I won't go into it in detail. That is another thing you would stop here. Although the Widow's Pension Law was enacted under a sentiment in this State which could not be resisted by even a few of the reactionary legislators we had in our body, who felt it was out of harmony with our form of government to go into the humanitarian business as they called it, and yet the sentiment in the State was so strong, that those gentlemen, the leaders of their party in both Houses of the Legislature, had no influence with their own followers, because of the public sentiment upon that measure. And with the exception of their votes in the negative, there were practically no votes against the Widow's Pension Law. Yet, coming as we do with this message from the people of the State, Mr. Barnes here in the year 1915, in this day and age, would say these laws are against the theory of our government, and, therefore, they should not be enacted and we must put a prohibitive provision in our Constitution. If it were ever suggested by any other than a man with the intellectuality of Mr. Barnes, it would be laughed out of court.

Now, lastly, is the minimum wage question. I don't know whether the State is prepared to enact a minimum wage law, but this is the theory upon which a minimum wage law is advocated.

It is upon exactly the same theory that the Workmen's Compensation Law and our advanced labor legislation have been enacted. While benefiting a class, it is enacted mainly for the benefit of the State and not the individual. It is enacted so that we may insure a living wage to our women and children whom we have in mind; so that they may have sufficient out of their labor to nourish their bodies and to live a life of decency and morality.

And it is upon that theory that the States of Oregon, of California, of Mississippi and other States of the Union have enacted minimum wage laws; and to those who are concerned about the socialist tendency of that legislation, you might point to the conditions in the States where it has been enacted. In none of them now could you even attempt to repeal the law. In the State of Massachusetts, as conservative as the State of New York, they have now a Minimum Wage Commission. So that while in effect the decisions of the commission have not the effect of law and cannot be enforced beyond the publicity of the investigations which they make, upon the scale of wages which are paid, it is so effective that it has tended to increase the wages of the girls and the children working in the State of Massachusetts. I do not know whether at the present time a majority of the Legislature would say it is wise to enact legislation of that kind in this State. Personally, I think it would. That is simply an individual view, which I don't care to impress upon any one else. But why, why, if conditions are ripe for it, if the people of the State through their representative branch of the government, through their own representatives, want this done, why do you propose to tie up their hands? So that if the time shall come, when, from the humanitarian standpoint, the economic and sociological standpoint, it should be wise, and from the governmental standpoint, it should be wise for our legislators and our Governor to enact a law for a minimum wage, why do you say, or propose to say, in this fundamental law, irrespective of those laws, and irrespective of this public demand, we propose to tie your hands, no matter what the majority of the people may say. This proposal arouses in me a suspicion, in spite of the machinery proposed for the enjoyment of the privilege, a distrust, not only of the Legislature, but a distrust of the people to run their own affairs. And so, by cumbersome machinery, you propose to defeat that which you cannot by public will. But it will never be done.

I have some statistics here which it may not be amiss for me to read to you. While we are talking here about theories and about principles, we have not in mind the poor woman and the man in our factories struggling for a living, who don't care so much about the discussion of the philosophy of government as

they care about and seek for the care of the government to make them dignified members of society. Our Factory Investigating Committee examined upwards of two thousand stores and factories throughout the State of New York. Out of the fifty-seven thousand women and children employed, thirty-four thousand were earning less than eight dollars a week. Out of fourteen thousand men, seven thousand received less than fifteen dollars a week. Half of the women of thirty years of age earned less than eight dollars a week. Half of the skilled female operatives, after twenty years' experience, received less than ten dollars per week. About two-thirds of the women employed had an average of a month lost time in each year. Even in the steady and skilled employments women did not exceed an average weekly wage of eight dollars per week. Of the women workers about two-thirds resided with their families; one-sixth with their friends or relatives; one-sixth boarded with strangers. Low wages of this kind certainly will produce a low standard of living. A deprivation of sufficient clothing, of sufficient food and decent living conditions, constitute an incalculable peril to the health and to the morality of our workers. And if with statistics like this before them, our legislative body, for the interests and the welfare, the common welfare of our State and for the preservation of the health of these women and children, should decide that the minimum wage is the only remedy. I plead with you not to tie their hands so that that remedy, beneficent as it may be, cannot be carried out because of the obstacles which you are proposing to put into the way of this reform. This is reaction of the worst kind and it will endanger and reject overwhelmingly your whole Constitution if you will propose to take us back over a hundred years and submit something to the people not in harmony with their ideas or their ideals of this government.

Mr. Schurman — While I am a member of the Committee on Legislative Powers, of which Mr. Barnes is the chairman, I opposed this Proposed Amendment in the Committee and explained that I intended to oppose it on the floor of the Convention. I want to say, however, Mr. Chairman, that it seems to me this is one of the most significant, one of the most important, one of the most profound propositions which this Convention has to consider, because it goes to the heart of the question regarding the proper functions of government. Mr. Barnes presented his proposition to the Committee with great force, with immense power of depiction, convincingly, and even those who differed from him have to acknowledge, as I freely acknowledge, that no proposition submitted to the Convention, it seems to me, is more full of thought, has more profound thought than this proposition.

The greatest thinker imposes one penalty, whether there are any privileges or not, on the world: he compels the world to understand him, and in that respect Mr. Barnes has imposed not a privilege, but a task on this Convention. Now, I think it is easy to misrepresent this proposition. As I understand it, Mr. Barnes believes that certain privileges which he has endeavored to describe in this Proposed Amendment are injurious to the commonwealth and even destructive of its existence. He believes, therefore, that the Legislature should not be permitted to confer such privileges. And there follows the natural conclusion that, if the legislature is estopped from granting such privileges and immunities, they must, if granted at all, be granted by the sovereign people themselves. That is the proposition or those are the propositions which Mr. Barnes submits for our consideration. Now the first question that I am disposed to ask, whenever a Proposed Constitutional Amendment is laid before us, is this: What particular evil is this Proposed Amendment calculated to remedy? Do we think that the exercise by the Legislature of the power of granting privileges and immunities has been so abused that they must henceforth be divested of that function? Unless that proposition is established, I do not know why we should vote for this Proposed Constitutional Amendment however desirable it might be in other respects. Now I find, Mr. Chairman, that a great deal of legislation, laws enacted by the Legislature, involve, so far as I can make it out, privileges of one kind or another. I was surprised to find, when I began thinking about the subject, that since the opening of this Convention, since June rather, I myself have been a beneficiary of this special class legislation. In order that I might be near the city of Albany and attend to the duties which membership in this Convention carries with it, I took a house on the banks of Lake George for the summer. I have discovered since I took the house that, as a resident on the banks of Lake George, I enjoy privileges denied to all other lake-dwellers in the State. A law was passed and signed by the Governor on the 26th of April, 1915, providing that any person who operates a boat, barge, vessel, or other floating structure on Lake George, propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naphtha, or other substance, without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner, shall be guilty of a misdemeanor. I appreciate very much, as a dweller on the banks of that lake, the sabbatic quiet which in consequence of this legislation I enjoy when I go there to spend the twenty-four hours between the close of one week's labor here and the beginning of the next. I cannot, for the life of me, see

that this exercise of the functions of special or class legislation, this grant of privilege to us lake-dwellers on Lake George, is any injury to the rest of the State. Now, Mr. Chairman, that personal experience set me thinking about the laws of the State in general, and they seem to me to be full of privileges and immunities of one kind and another. The Code of Civil Procedure, for instance, provides that women shall enjoy a certain immunity in the matter of arrest in civil actions as compared with men. Men may, in such cases, be arrested for a great variety of causes but in the case of women the number is limited. Does any one object to that? Has the Legislature in providing such special privilege done anything that we disapprove of? Again, we find that the Military Law of the State exempts from service large groups of citizens of the State,—retired, honorably discharged soldiers and sailors, yes, but also civil officers, also members of certain professions, also wage-earners in certain employments. I have heard no fault found with the granting of the Legislature of these privileges. So, again, the Judiciary Law grants certain exemptions as to jury duty. I understand that the list of exemptions is not perfectly satisfactory, and that list may easily be corrected by the Legislature. But the principle of such exemption by the Legislature is nothing that, so far as I know, anyone has reason to find fault with. And so it seems to me that the case must be proved, and it has not yet been proved, that there is need of action by this Constitutional Convention restraining the Legislature from exercising functions of this kind, which, so far as I know, it has exercised ever since New York was a State.

In the second place, Mr. Chairman, I find an inconsistency between the proposal to strip from the Legislature this particular function and to leave with the Legislature the power to enact other laws equally important, with results equally momentous. We leave with the Legislature the power to enact laws dealing with property, conveyance and inheritance; we leave with the Legislature the power to enact statutes providing for the organization of corporations and their subsequent operations; we leave with the Legislature the power to enact statutes dealing with domestic relations, the relations between husband and wife. What more important subject could any legislative body deal with than these matters of personal and property rights? Yet we leave them with the Legislature without the slightest anxiety. Why, then, do we find it necessary to strip the Legislature of the power of dealing with the subjects embraced under this general category of social legislation? Mr. Chairman, whether you mean it or not, the result of this policy, if adopted, would be to undermine the power of the Legislature, to reduce its influence and to make it a much

less potent factor in the State than a great many members of this Convention desire to see it. I am with all members of this Convention who in any legitimate way desire to increase the powers and influence of the Legislature. In the government of the State, more than any other agency of the State, it represents the sovereignty of the people. If in some way the Legislature could attract to itself a larger proportion than it does now of young men of integrity and ability, I should think it one of the greatest blessings that could accrue to our State. The way to accomplish such a result is not, gentlemen, in my opinion, to increase salaries, but to put responsibilities on the members of the Legislature. This proposed amendment divests them of responsibilities which they now enjoy and makes the Legislature a less attractive place than it has ever been in the past. I confess, Mr. Chairman, with great frankness, that I have been surprised that such a proposal has come from Mr. Barnes. I have read, as many of you must have read, Mr. Barnes' splendid vindications of the ancient theory and the sound theory of American government. Few men in the State have discriminated more correctly between pure democracy and representative government. No one has preached in more Jeremiah-like tones the danger to which this republic is now exposed of embarking on the paths of pure democracy. "The United States", he says, "is not a democracy. It is a republic. The difference between a democracy and a republic is the difference between government by all the people directly and by all the people through representative agents. A pure democracy has never lasted in the history of the world for any considerable period." Never, Mr. Chairman, were truer words, or more pregnant, ever spoken about the government of our State. And now, to my amazement, to my discomfiture as an ally with him in the defense of that sound theory of government, I find Mr. Barnes himself submitting to this Convention a proposal in the field of legislative activity to revert to the form of pure democracy, to drive our representatives out of a certain field of legislation which they have hitherto occupied.

Mr. Chairman, I do not intend at this time, as Mr. Wagner has done, to discuss the inherent merits of minimum wage legislation. That will come before us in another connection before this Convention adjourns. Nor shall I say anything about workmen's compensation or widows' pensions other than to profess my own entire satisfaction with that legislation and to proclaim here on the floor of this House that I was one of those who have consistently advocated it. Other occasions, as I say, will present themselves for discussing the merits of these phases or some of these phases of social legislation. I have been confining myself simply to this

proposition, as I understand Mr. Barnes conceives it, and wants us to discuss it. I have tried to adapt myself to his point of view. But I cannot, sir, take my seat without saying that in my judgment this proposal is a grave discrimination, grave discrimination against one class of our citizenship. Social legislation, which is the great problem confronting all the civilized governments of the world, is a problem with which the State is specially concerned. Mr. Barnes' proposal, if adopted, will make it harder for the wage-earners to secure legislation in their interests than it has been in the past or than it will be in the future for any other class or group in the republic.

Mr. Cullinan — Mr. President, I would like to ask the gentleman a question. Whom do you call wage-earners? Artisans only or will it include farmers?

Mr. Schurman — The word "wage-earner" would not include a farmer who owns his own farm. A wage-earner is one who receives wages for work which he renders others. But I was about to say that Mr. Barnes' proposal if adopted would bear with tremendous effect on that class or group of our citizens, and I ask what can have induced Mr. Barnes, political philosopher as he has shown himself on this question, practical politician as he is known also to be, to introduce a proposal of this sort? Now I believe, and I speak with great frankness, that Mr. Barnes has embraced an erroneous theory of government, and solemnly invested his error with the name of Americanism. His thesis is that government exists for the sake of equality. I deny it. At the time of the French Revolution it was said that the ends of government were "Liberty, Equality and Fraternity." I do not except that formula. I think a partial account of government might be given if you said it aimed at "Liberty, Equality and Humanity," But I want to say at once it is only a partial account. None of us can tell consistently what ends the State is here to promote. We have inherited it with all its priceless blessings and privileges from the past. The spirit of it has entered into us. I for one don't want to be wise enough to change the practice and the record of the State as that practice and record have been written in the past. I am willing without introducing thought of fear — I am willing without introducing speculation which I believe to be most dangerous in politics — I am willing to take the problem of the day as it arises, dealing first with this question and then with that, recognizing that in a progressive community like ours — all the tasks of legislation may be embraced in one phrase, that we are constantly readjusting the life and needs of our society to the

environment in which we find ourselves. I am afraid, Mr. Chairman, of speculation. Let us walk in the old ways; let us be guided by the old precepts, and let us go on doing what we have done — safeguarding our liberties, cultivating equality, practicing humanitarianism when we see humanitarianism necessary. Gentlemen, I most devoutly hope this proposal will not be adopted. There is dynamite in it. If adopted, it has the energy to blow up all existing political parties, to create class antagonism where peace and concord now prevail, and to impair, if not, indeed, to undermine that authority on which, in the end, all government rests, an authority which, gentlemen, in all the civilized governments is permanently embodied in the Legislature of the State.

Mr. Hale — Mr. Chairman and gentlemen of the Committee: I am going to take as my text for a few words on one portion of this proposed amendment, the question of Dr. Schurman, who asks what particular evil is this proposed to remedy. And I will answer at the beginning with frankness that one of the remedies, and a principal one — or one of the evils, that I would like to see remedied, is the ability or the opportunity for any citizen of the State of New York, whether he has been a Governor of the State or the President of the United States, or whether he is simply a citizen of the State, in honor bound to respect its institutions, including its courts, from going outside the State of New York into the State of Ohio or anywhere else, or into the Continent of South America, and saying what an ex-Governor and an ex-President of the United States said to the Ohio Constitutional Convention at Columbus on February 21, 1912; and I am not going to read the speech entire, but I am going to read some things out of it, and I am going to ask you whether you want lawfully and intentionally, and with your eyes wide open, to put the Court of Appeals of the State of New York again in the position that the Court of Appeals was put in by these criticisms. And first I think I can quote out of the mouth of Theodore Roosevelt a justification of Mr. Barnes, and stopping on the threshold, I want to say that if you are going to hyphenate me as a Republican, I am not a Barnes-Republican, I am what used to be known — and I have not changed any, I hope — as a Hughes-Republican, if you have got to couple me up with anybody. I don't believe anybody needs to be hyphenated. I don't believe any Democrat here needs to have anybody's label on him, but if I was going to be labeled, I would not be labeled Barnes-Republican, I would be labeled Hughes-Republican.

Now, Theodore Roosevelt said at Columbus before the Constitutional Convention: "I hold it to be the duty of every public

servant and of every man who in public or in private life holds a position of leadership in thought or action to endeavor honestly and fearlessly to guide his fellow countrymen to right decisions," So I think you are justified, Mr. Barnes, thinking as you do, in endeavoring to guide the members of this Convention to a right decision on such a matter as the question, for example, of the minimum wage or of the widows' pension. "Here" — and I read the exact language that was spoken in a constitutional Convention assembled as this would be, if an ex-Governor of Ohio and an ex-President of the United States should come to us — "Here I am not dealing with theories; I am dealing with actual facts. In New York, in Illinois, in Connecticut, lamentable injustice has been perpetuated, often for many years, by decisions of the State courts refusing to permit the people of the State to exercise their rights as a free people to do their duty as a conscientious people in removing grave wrong and social injustice. These foolish and iniquitous decisions have almost always been rendered at the expense of the weak; they have almost always been the means of putting a stop to the effort to remove burdens from the wage-workers, to secure to men who toil on the farm and on the railway, or in the factory, better and safer conditions of labor and of life. Often the judges who have rendered these decisions have been entirely well-meaning men, who, however, did not know life as they knew law, and who championed some outworn political philosophy which they assumed to impose on the people. Their associations and surroundings were such that they had no conception of the cruelty and wrong their decisions caused and perpetuated. Their prime concern was with the empty ceremonial of perfunctory legalism, and not with the living spirit of justice. A typical case was the decision rendered but a few months ago by the Court of Appeals of my own State, the State of New York, declaring unconstitutional the workmen's compensation act. In their decision the judges admitted the wrong and the suffering caused by the practices against which the law was aimed. They admitted that other civilized nations had abolished these wrongs and practices. But they took the ground that the Constitution of the United States, instead of being an instrument to secure justice, had been ingeniously devised absolutely to prevent justice. They insisted that the clause in the Constitution which forbade the taking of property without due process of law forbade the effort which had been made in the law to distribute among all the partners in an enterprise the effects of the injuries to life or limb or a wage-worker. In other words, they insisted that the Constitution had permanently cursed our people with impotence to right wrong, and

had perpetuated a cruel iniquity; for cruel iniquity is not too harsh a term to use in describing the law which in the event of such an accident, binds the whole burden of crippling disaster on the shoulders least able to bear it — the shoulders of the crippled man himself, or of the dead man's helpless wife and children. No anarchist orator, raving against the Constitution, ever framed an indictment of it so severe as these worthy and well-meaning judges must be held to have framed if their reasoning be accepted as true. But, as a matter of fact, their reasoning was unsound and was as repugnant to every sound defender of the Constitution as to every believer in justice and righteousness. In effect their decision was that we could not remedy these wrongs unless we amended the Constitution — not the Constitution of the State, but the Constitution of the nation — by saying that property could be taken without due process of law! It seems incredible that anyone should be willing to take such a position. It is a position that has been condemned over and over again by the wisest and most far-seeing courts. In its essence it was reversed by the decision of State courts in States like Washington and Iowa, and by the Supreme Court of the nation in a case but a few weeks old." And so on. I have not read the most violent part of it, but I have read enough to bring home the thought and the reflection to the serious consideration of delegates to this Convention, whether they desire that the Court of Appeals of this State or any other court shall again be put in a position and the necessity of declaring some law to be unconstitutional which will enable a demagog, no matter how highly placed he may be, to criticise in the fashion and the terms of the language which I have read. What are you going to do? Senator Wagner has spoken of a widows' pension law, passed in the winter of 1915. It is a misnomer. No widows' pension law was passed by the Legislature this year. What was done was to render it possible for a county to contribute to the cost of maintaining infant children of a widow, when she was dependent in part and pay the money to her. But it was actually limited to the money that would have had to be paid to an institution. And before granting an allowance the board shall not only determine that the mother is a suitable person to bring up her own children and that aid is necessary for her to do so, but further that if such aid is not granted the child must be cared for in an institutional home; and further such allowance or allowances shall not exceed the amount or amounts which it will be necessary to pay an institutional home for the care of such widow's child or children. Do

you call that a widow's pension act? If you do, you are giving a name to it that does not belong to it, because it is merely a species of outdoor relief so-called.

Mr. Parsons — Would the law to which you have just referred, misnamed the widow's pension law, be possible if Mr. Barnes' amendment was put into the Constitution?

Mr. Hale — Yes, sir; without a doubt.

Mr. Parsons — How would it, under the second section?

Mr. Hale — Why it is a simple question of the support of the poor.

Mr. Parsons — Well, that is prohibited by this.

Mr. Hale — Well, I don't understand it is. If it is I am not going to vote for it but I want to call the delegates' attention to this provision, "Establishing a minimum wage for service to be paid to any employee by a private employer." And I am asking the attention of the delegates to other questions like the widows' pension that I have spoken of, that if there is no prohibition, may be enacted by the Legislature and may be put up, this very question, to the Court of Appeals to be decided, upon the existence of the powers that now are vested in the Legislature. Now I want to go back and show what absolutely unjust criticism this was. I want to go back and show from the nature of the workmen's compensation act of 1910, that there was not any reason why anybody should have criticised the Court of Appeals for that decision; that the Court of Appeals could not have made any other decision and not violated the Constitution itself. In the first place the article was made to apply to "workmen engaged in manual or mechanical labor in the following employments, each of which is hereby determined to be especially dangerous." That is a legislative fiat. Now amongst the things that are determined to be especially dangerous is work on scaffolds of any kind elevated twenty feet above the ground, water or floor, erection or construction, painting, alteration or repair of buildings, bridges or structures. Now an "employer" is defined to be the "owner," and the definitions of "employer," "workman" and "employee" make it absolutely necessary that the owner of a dwelling more than twenty feet high, necessitating for example reshingling of the roof, should assume all risks that were mentioned in this law. The word "corporation" does not appear in the law from start to finish. Now what happens? It is true that in the Ives case the man who was injured was a brakeman on a railroad train, a freight train, but as I say, the law was not aimed against corporations any more than it was aimed against individuals. So that in my own village of Canton, for example, my nextdoor neighbor is a maiden lady, eighty-odd

years of age with a little home worth about \$3,000. It happens to be more than twenty feet in height. She finds it necessary to have the roof shingled. She sends to her neighbor, a carpenter, worth more money than she is — but she cannot very well do her own shingling; she is not engaged in shingling houses as a gainful occupation or an industry. She has got her own house to shingle and she cannot do it herself and she has to hire somebody to do it and she employs the contractor, who undertakes to shingle the house for a price. On his way back to the afternoon's work he steps in at the corner saloon and loads up with a little too much beer and ascends on the scaffold in a condition of partial intoxication, but not sufficiently so as to render the act his own wilful negligence, but in that condition he falls off the scaffold and breaks his neck. Now what happens, or would have happened, what would have had to happen if that law had been held to be constitutional? It would have meant that under the terms of the law this maiden lady who tried to get her roof shingled would find herself indebted to the widow of the man who broke his neck because he got drunk, indebted to her to the amount of \$3,000, and there would not be any escape from it under the law because the law fixes the damages and makes them recoverable in an action at law. Now what would be the medium of transfer of the house of my ancient maiden friend to the widow of the workman? Why it would simply be the hiring of a neighbor to undertake to shingle her house and an accident for which she was in no wise to blame, and the transfer would be complete. Now, the Court of Appeals knew that. The Court of Appeals had to decide the way it did decide, and the decision was absolutely right, and a decision the other way would have been absolutely wrong. But having to decide an unpleasant question, because the defendant in that case was a corporation, a railroad, it had to encounter the criticisms that I have read to you. Not only the criticisms in the Columbus Convention, like this, but criticism in foreign countries where the courts and the constitutions of the United States and especially of our own State of New York were held up to public criticism and contempt. Now, do you want to do it again? Do you want to go ahead and pass a minimum wage law without providing for it in the Constitution or without providing for it by referendum or some other recognized method? Or do you want to put it up to the court to be in the same predicament again that the Court of Appeals found itself in in the so-called Ives case? Not only that, not only that, but the judge who wrote the opinion in that case, Judge Werner, lost an election, lost the nomination of a political party in the control of the same individual I have alluded to because of the fact that it was his pen which put on paper the unanimous decision of the Court of Appeals.

Mr. Barnes — It seems to me that this is an appropriate time for me to state what I know, that Judge Werner did not lose that nomination, but declined it.

Mr. Hale — I think I know enough of the story, Mr. Barnes, to be able to get at the substance of it accurately. It is a fact that is well enough known in the political history of the State of New York that Judge Werner by stating over the telephone that he recanted the views that he had been obliged to express before because of his own judgment and the judgment of his fellows, could have had the Progressive nomination for Chief Judge of the Court of Appeals, and it is to the everlasting credit of Judge Werner that he answered over it that if the price of that endorsement and nomination was the recanting of his judgment, and standing as he did for the court, that he simply could not receive and would not accept any such designation, and that decision and the writing of that opinion cost Judge Werner the Chief Judgeship of the Court of Appeals of the State of New York. Now, how many more good judges, how many more men that deserve the very best of their fellows, do you want to put into the position that Judge Werner found himself in? It is related in Scripture that Satan took the Lord up on to a high mountain and showed a vast country and made Him some proposition about the transfer of title to him, providing the Lord would bow down and worship Satan — or words to that effect. Now, it has been said that really Satan didn't have anything to give to the Lord and therefore, the temptation was not very great. But Theodore Roosevelt had a Chief Judgeship to give to Judge Werner and it was a great temptation, and he was equal to it, and he declined it. But do you want to make it necessary for good men like Judge Werner to be put in the position of being criticised and having it cost them the legitimate reward of a professional experience that was worthy of the highest reward? I represent a rural community. There is only one city in my senate district and that is a small one. Practically all of my constituents are farmers or small villagers, people who own their own homes; people who have gained them by the slow accretion of savings, but who cherish what they have gained. It is an old-fashioned country. It is equal to stepping forward and helping the poor. I have not much doubt that if this provision is formulated and it seems to be the wise and the best thing to give to a woman a pension when her husband dies, if she is needy, and best to provide a minimum wage, I have no doubt that my people will receive the evidence and deal with it in a spirit of intelligence and charity; but when a Constitution forbids it, or when the Court of Appeals construes the Constitution as having forbidden it, you want to remember that, just like the shingling

of the house, it may be that my constituents have some rights and that their property should not be taken away from them unless at least their fellows in the State vote that they want to make a contribution. I want to direct the remarks that I have made exclusively to the last paragraph. I don't think, myself, that I could vote for this proposed constitutional amendment in whole, because I do think it includes something that we ought not to forbid to the Legislature. But I am perfectly clear, gentlemen, that before you give to the Legislature the power to establish a minimum wage in the State of New York, before you give to the Legislature the power to establish the widows' pension in the State of New York, you should give it to them frankly and openly, or, as here, that you should withhold it, enabling the people themselves to determine when the moment has arrived and they desire to take another step in democracy.

Mr. Clearwater — I entirely agree with the distinguished President of Cornell University and the Chairman of the Committee on Education, that the question involved in this proposed amendment is one of the most important to be considered by the delegates to this Convention. It is precisely, as he well said, a provision which reaches the very fundamental principle of free government. And also I agree with what was said by the talented Chairman of the Committee on Finance the day before yesterday in his masterly exposition of what, to most of us, was a very recondite subject — I agree with him, sir, when he said that America is at the threshold of her problem. And the problem embodied in this amendment is, sir, one of the problems that confront the American people to-day; a problem, sir, confronting the delegates to this Convention, a problem prophesied by Montesquieu, foretold by Macaulay, and described as being at our doors by Bryce and by Constant, both of whom have been the guests of this State, in this very Chamber. And of all the words that have been uttered since this Convention assembled the utterances of those two distinguished gentlemen are the most pregnant with meaning to the people of this Imperial State. I am surprised — I had almost said shocked — at the narrow construction of the phraseology of this amendment placed upon it by eminent, perhaps I should say pre-eminent, jurists. Having since the beginning sat at the feet of the chairman of the Judiciary Committee as Saul sat at the feet of Gamaliel, I have been surprised at his construction of this amendment. As I understood him, he said that to write this into the fundamental law would prevent the Legislature from appropriating money in case a devastating pestilence broke out among us; that it would inhibit the Legislature from voting money in case of war or of foreign invasion. I am sure that so eminent a lawyer as the chairman of

the Judiciary Committee said that in that zeal of advocacy which even the most illustrious members of our profession resort to in the espousal of a case in which we are interested. Let us see. "The Legislature shall not pass any bill: Providing for or authorizing the expenditure of any public money to be paid to any person except for materials furnished or services rendered upon employment by the State or a civil division thereof, in recognition of such services." In case of pestilence, for what would the Legislature furnish money? For medicines, for hospitals, for medical attendants, for nurses, for all the vast array that goes to alleviate suffering. Would not that be, sir, for material furnished and for service rendered? And in case of war or foreign invasion, for what could the Legislature vote money? For what by any possible stretch of the imagination could it vote money except for materials furnished and services rendered? Munitions of war, are they not just as much material as hay and fodder? Powder and shell, cannon and projectile, are they not material in the broad sense of that term? Surely so. And services rendered — what could be a higher or a finer service rendered to the State than that rendered by its defenders? Surely that amendment does not inhibit the Legislature from doing precisely what my distinguished preceptor, the Chairman of the Judiciary Committee, said he thought it prohibited. And he said that it would block the wheels of government, that our hospitals would cease, that our eleemosynary institutions would decay, that the friendless and the homeless and the orphan and the insane would be bereft of aid. For what does the State vote money for their support? For clothing, for food, for medical attendance, and for services rendered. No, Mr. Chairman, there is nothing in the language of this amendment which justifies the narrow construction which has been placed upon it by the gentlemen who have opposed it. "The Legislature shall not pass any bill: Granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State." Is there any delegate on the floor of this Convention who will arise in his seat and state any special privilege he wants granted to any class of individuals or any individual, any privilege or immunity that he wants granted to himself or anybody that he represents, that he is not willing to have extended to all the people of the State? I doubt it, sir.

Mr. Baldwin — Is not that language broad enough to cover the granting of licenses to physicians for the practice of medicine or to druggists for the sale of drugs, or to those, perchance, who may desire to practice law?

Mr. Clearwater — You ask whether this would prohibit it? Why, no, certainly not. Most assuredly not. The Legislature

would be bound, is bound and will be bound, I fancy, if this Constitution is adopted, to provide that any one who complies, for instance, with the regulations and rules of the Court of Appeals, and with those of the regents of the university may practice law; whether he be black or white; whether he be red or yellow; whether he be male or female, and I fancy for anybody the Legislature would be bound to provide, if it has not already provided, as I think it has, and this would not inhibit, and it would not prevent any one who complied with the laws of the State, the general laws of the State, regarding the qualifications for the practice of medicine, from practicing that profession. These narrow constructions are absurd. It is astounding, and more than astounding, that gentlemen selected from the various localities of this State, selected because of their character, their experience, their training, and their wisdom to form a Constitution, should incline to so narrow a construction of a great constitutional provision. As to the Legislature. I have no quarrel with past Legislatures. When I listened to my friend from Saratoga, Senator Brackett, when he describes the virtues of the Legislature, I began to think that they were as free from reproach as the vestal virgins, but after I listened to the experience of Mr. Smith and Governor Sheehan and the other distinguished legislators who had served in the Legislatures of the past, I began to think that, like the Justinian Empresses, they were no better than they should have been. It is not with the past Legislatures that we are to deal. This Proposed Amendment does not interfere with the past. If the Legislature has passed a workmen's compensation act, if the Legislature has passed a widow's pension law, if the Legislature has passed a law going so far as to provide that mufflers should be used upon boats on Lake George so as not to disturb the distinguished President of Cornell, there is to be no interference with that; and none of these great privileges enjoyed by large classes and by eminent individuals are interfered with. No. "The legislature shall not grant hereafter,"—"Grant hereafter;" that is for the future and not for the past. There is no interference with the past here, sir. There is a prohibition and an inhibition as against the future. And, should there not be? Some two years ago at the request of the New York State Historical Association I prepared and read before an audience in the home of my friend Mr. Cullinan, at Oswego, a paper upon this exact subject in which I reviewed in far greater length than I can here; at a length that it would be folly to trespass upon the Convention at this time, what seemed to be some of the dangers pressing upon the American Republic and upon this great State of New York. In years gone by when we talked of special privilege, special privileges to be guarded against, we

had in mind the privileges granted to the great, to the wealthy, to the individual, and that still is in the minds of most men when we speak of special privileges; and that surges up in the mind of every man within the sound of my voice, and not only within the sound of my voice but throughout the length and breadth of this country. When special privileges are talked about, he thinks about the special privileges granted to the classes I have enumerated. That has been true, sir. In years gone by only the wealthy, only the influential, only the powerful could command special privilege. But that day is past. It was very truly said by the chairman of the Finance Committee the day before yesterday that the golden period of American youth has gone by. We have reached, sir, as well indicated, by the greatest writers on American civilization, the problems of maturity, and among the greatest problems of maturity, is a careful guarding of the rights of the individual against the oppression of the majority. Representative government, my friend from New York said. Is this an attack upon representative government? Oh, no. This is an instrument for the preservation of representative government. For the preservation of our civilization and our institutions against the oppression of the majority and that is why I vote in favor of this idea; that is why Mr. Barnes, with very great care and foresight, has presented it for the consideration of this Convention. It has been said here, strangely enough, by many of these gentlemen during the course of our debates, that we should only frame amendments to guard against existing evils. That, sir, is not my conception of the duty of a constitutional convention. My conception of the duty of a constitutional convention not only is to remedy existing evils, but to provide against those evils which the future holds in its womb. Why, if we are so destitute of prescience, if we are so lacking in vision, that we cannot foresee that there are dangers pending ahead of the Commonwealth, we are unfit for the position that we fill, and others should be occupying those chairs who can adorn them. If our grasp is so narrow that we cannot foresee the evils which may come and probably will come and which are knocking at our doors, we should not be here. Are there any such evils? Let us see. Of course, civilization has changed, marvelously changed. I spoke of Constant. Let me read what he says; let me read what he said only sixty days ago. It must have been read by almost every delegate in this Convention. It was commented upon by all the great American and European reviews. Possibly we have been so busily engaged here in framing a Constitution against present evils that it may have escaped some of us. Let me read it: "Within twenty five years the government of the United States will be so changed that we would not recognize it. The

furious speed with which the American people are rushing into new conditions will revolutionize its own system before it knows it. Every tendency of the time is toward the subordination of the individual, on which the government was founded, and that is the theory of its system, and toward the supervision of the whole business of life, down to the smallest details by the government." The American spirit, the old American spirit, is passing and soon will have passed forever. When De Toqueville said that it would come, when Montesquieu said it must come, and when Macaulay, but a few years before his death, prophesied it, they were looked upon as prophets of very little worth, and it may be said that Mr. Barnes and the men who advocate the provisions embodied in this amendment may be like John the Baptist, mere voices crying in the wilderness, preaching to unheeding ears. But, sir, at your age, and at the age of the men who surround me here, I predict that when you will be seated in another constitutional convention in this room and in this building, if this amendment or something like it is not written into this Constitution, you will regret, and the delegates to this Convention will regret, that they had not the vision and foresight to guard against the inevitable.

Mark my word, and this I say to a man of your future, that, sitting in another constitutional convention, and may God speed your life, you will remember what I say to you now, when you are seated in that chair. Now, I can address myself in the limited time at my disposal to a single phase of the cause which creates the condition which I regard as menacing. I would be very glad if I had the opportunity to cover the entire field, but I cannot. Let me address myself to the single phase of which Constant speaks, and of which all of these illustrious men I have spoken of have referred, and that is the changing character of our civilization due to our foreign immigration. I have heretofore analyzed the immigration to this country, beginning with 1600, practically, and carrying it down to 1911, with my analysis, but I cannot burden you with all of that this afternoon; interesting as it is to me, interesting as I fancy it must be to any man who has had to be concerned with the many problems of government. But, for the purposes of this discussion, let me divide the immigration into two periods, that which preceded and that which followed the year 1880. It is known to everybody who has given even a superficial attention to the immigration prior to 1880, that it came primarily from England, Holland, France, Ireland, Scotland, Wales, Belgium, Germany, Norway, Sweden, and Switzerland. That is to say, it was English, Celtic, Scandinavian and Teutonic, and it blended in. They were free people. The people of Great Britain were free people; the Scandinavians were free; the people of Germany before the Prussian domination were free.

Before the ascendancy of the House of the Hohenzollern they were comparatively free in Germany. The civilization of Germany is not Teutonic or German, it is Prussian and Hohenzollern, simply that and nothing more. The Swedes were free. Those are the classes of immigrants which came to this country prior to 1880. The German, the English, the Dutch, the Hollander, the Huguenot, blended in, and became magnificent citizens of this country, and their descendants are here in this Chamber and I am one of them. Since 1880, however, these countries whose names I have given you between 1620 and 1880, which was a period of 260 years, contributed 95 per cent. of the total immigration to America. Since 1880, the entire racial character of our immigration has changed, and 80 per cent. of the total number of emigrants who have come here since 1880, have come from Austria, Hungary, Bulgaria, Greece, Italy, Montenegro, Poland, Portugal, Roumania, Russia, Servia, Spain, Syria and Turkey; all of entirely different racial characteristics. Now there is another characteristic of the emigration from Northern Europe which is of importance. When it came here and landed at our ports it largely went right straight through to the west. It did not linger in our seaboard cities. It went through and built up that magnificent empire west of the Allegheny river, south of the Missouri and then gradually extended beyond the Mississippi and the Rockies until we have the population that we have to-day. What about this latter emigration? That is not its animating spirit. It comes here with a notion that if it works hard and is not too scrupulous it may acquire sufficient to enable the emigrant to return to his home in southern or eastern Europe, or in Asia, there to spend his days in comfortable idleness.

That, sir, is the idea of the later emigrant. And he stays on the seaboard and as I pointed out upon the debate the other day, while the western States in the last ten years had increased by ten to fifteen per cent. in population, the State of New York had increased thirty-five per cent. in population, and ninety-one per cent. of that thirty-five per cent. was this southeastern Europe and Asiatic emigration. Mr. Barnes has referred to the proletarian. Up to this time, sir, up to within a very few years, there were no proletarians in this country, and when I used the term "proletarian" I use it as it was used by the Romans. I mean the man who has no property, who never will have any property, who has not the industry, the frugality, and self-denial to accumulate property; a man who will breed children, and who will himself, throw himself without scruple or reserve, upon a community for support. That is the proletarian, and that is the proletarian class that is growing up in our great seaboard cities, and in no city

greater than in this imperial city of New York, which any man might be proud to represent in this hall or anywhere else. Nobody knows it better than the representatives of the city of New York. Now, these people who are not familiar with our ideals and our institutions, are going to become American citizens and they are going to be allowed to vote. They elect members of the Legislature. They create the Legislature. They create their own condition and demand equality in the Legislature. If they have not done it heretofore, they will very shortly do it. The question is, what privileges will they demand? Have they the American spirit? Do they care for American ideals? Will they care? But it is to guard against the possibility or probability that they will not that this amendment to the Constitution is offered for your consideration. Is it wise to deprive the Legislature of necessary powers? No. If they become sufficiently dominant to get the special privileges which they demand, then let the Legislature get it flat from them and let that be an amendment to the Constitution of the State, so that these special privileges shall be granted by the people themselves, but do not let a subtle, knee-bending, vote-grafting, favorite-seeking Legislature of the future confer these special privileges without a direct charter from the people and authority to do so. Why, it was only the other day, sir, that a former President of the United States, a man whom I think every distinguished member of this Convention believes in and a man who bestowed upon them the most important gifts of his official family, said this: "Industrial disturbances of the last ten years in America have come near bringing us to the verge of a revolution." While this is the view of many thinkers, it is still a view of a situation, grave enough without exaggeration and one which should receive the attention not only of historical students, but of all the American people who have the best interests of their country at heart. I might cite you, sir, if the hour permitted, if my time permitted, many, many opinions from many, many publicists, sustaining this contention, which I want to impress upon your mind and the minds of the delegates to this Convention. I want to call to your mind and their minds the remarks about ideals made by my friend from New York. Speaking of the destruction of ideals let me remind him of what Lecky said in his history of European morals, and what every writer has recognized from Aristotle down, that no individual, no nation, no community ever rose higher than its ideals. That is a law, sir, as immutable as the precession of the equinoxes. Never have you seen an individual, never have you seen a community, never have you seen a nation that rose higher than its ideals.

Now, what was the ideal of the generations of whom the men

of this Convention are the children? What was the ideal of the father of every man who sits within the sound of my voice? Frugality, honesty, simplicity, more education for his boy than he had himself, greater opportunity to his child than was afforded to him, the desire to accumulate sufficient property so that his children never should be dependent upon others, the desire to amass enough of a competence so that in his old age, when helpless, possibly when ill, he should not be dependent upon others — the pride of the American. That was the American spirit? A contempt for the pro etarian, an unwillingness to accept alms, an unwillingness to receive special privilege, masculine, virile in his simplicity and his ruggedness — that was the American father of every man who listens to me, whether born upon our soil or whether he came here from abroad. That was the ideal that he sought to cultivate in the minds of his children who are sitting here. Has that ideal changed, sir? I think it has. I am not alone in thinking that it has. It is because I think it has changed that I wrote this paper and delivered it, and it is because I think it will change still more that I stand here advocating this amendment or something substantially like it. How have we changed? With this let me close. *Pari passu* with this racial degeneration has disappeared that reserve, that Puritanism with its spirit of restraint which tended to the elevation of the citizen, and in its train has come that influx of sensuousness, that receding of religion, that longing for amusement, that greedy craving for joy even with an erotic touch; that grasping for anything which tickles the senses, that flippancy which has introduced the vaudeville on the stage and in daily life, that desire for advantage over one's fellows, either by special privilege wrung from governmental influence or secured by the alluring and seductive influences of the promise of the ballot. With all this also has come a more sinister trend. The teachers of our youth gradually are abandoning their belief in discipline. As long as society was controlled, as it was by the moral influences of Puritanism, the lack of training, the insubordination under social authority and the disobedience of moral instruction were largely self-limiting. Now, sir, we have a growing and irritable impatience of discipline, an impatience which makes itself felt not only in daily life, but in our public schools, an impatience which, in my judgment, rapidly is becoming a menace to social safety and to American institutions.

Mr. Schurman — Mr. Chairman, I rise to a point of personal privilege. My dear friend, Judge Clearwater, in his eloquent remarks a few moments ago, suspended the flow of his eloquence and, looking at me, said that those responsible for the training

of youth have lost their belief in the efficacy of discipline. I beg to tell him that at Cornell University, over which I preside, we require military drill of all students for two years.

Mr. Clearwater — Dr. Schurman has been to me almost the Gamaliel that Mr. Wickersham has been, and I am shocked indeed to think that he would attribute to me any personal allusion when I spoke of a lack of discipline. In fact, as I understand it, sir, there is an austerity of discipline in Cornell University which equals that of the Trappist monks.

Mr. Wickersham — Mr. Chairman, will the delegate yield to one more question? A Saul who sits at the feet of two Gamaliels is apt to fall between two schools.

Mr. Chairman, I move that the Committee rise and report progress and ask leave to sit again after recess. I do that for the purpose of enabling the Convention to act upon an application by the Rules Committee.

The Chairman — The gentleman from New York, Mr. Wickersham, moves that the Committee do now rise, report progress, and ask leave to sit again. All those in favor of the motion will say Aye, opposed No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. J. S. Philips — Mr. President, the Committee of the Whole, having had under consideration General Order No. 28 and other proposals moved upon the calendar, has directed me as its chairman to make the following report which is herewith handed through the Secretary.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 786, introductory No. 701, by the Committee on Legislative Powers reports progress thereon and asks leave to sit again.

The President — The question is on granting leave to sit again. All in favor of granting leave will say Aye, contrary No. The Ayes have it and the leave is granted.

The Secretary — The Committee of the Whole having had under consideration Proposed Amendment No. 756, introductory No. 679, by the Committee on Taxation, reports in favor of the adoption of the same, with amendments.

The President — The question is upon agreeing with the report of the Committee of the Whole. All in favor of agreeing with the report will say, Aye, contrary No. The Ayes have it and the report is agreed to, and the amendment reported will go to the order of third reading.

Mr. Wickersham — Mr. President, I move the Convention take a recess until eight-thirty.

The President — The motion is unnecessary. The hour of half-past five having arrived, the Convention will take a recess until eight-thirty this evening. Whereupon, at 5:30 p. m., the Convention took a recess until 8:30 p. m.

AFTER RECESS—8:30 P. M.

The President — The Convention will come to order.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules respectfully submits the following report:

The Secretary — From Mr. J. L. O'Brian, the Committee on Rules respectfully recommends the adoption of the following resolution: That General Order No. 25 be continued as a special order for Monday night, August 16; that on that night, until the hour of 9:30 all speeches be limited to ten minutes each; that the remaining hour be equally divided between the opponents and supporters of the measure, and that the vote be taken not later than 10:30 p. m.

Mr. O'Brian — Mr. President, I move the adoption of the resolution.

The President — Those in favor of the resolution will say Aye, contrary No. The motion is agreed to.

Mr. J. S. Phillips — Mr. President, at this time I ask unanimous consent to make a motion, that William B. Clarke, who is assistant door keeper, be excused until Tuesday morning on account of illness in his family and without loss of pay.

The President — Is there any objection to the motion? The Chair hears none. All in favor of the motion will say Aye, contrary No. The motion is agreed to and the excuse is granted.

The President — The Convention will return to Committee of the Whole upon the pending special orders. Mr. Phillips will resume the Chair.

The Chairman — The Convention is in Committee of the Whole upon General Order No. 25.

Mr. Wadsworth — Mr. Chairman, this is a very interesting debate and we all want to hear it. May I suggest that the gentleman who is going to speak taken his place on the center aisle here?

The Chairman — If there is no objection, that course will be followed.

Mr. Burkan — Mr. Chairman and gentlemen of the Convention. I hate to differ with the views of the amiable gentleman from Ulster because of his charming, attractive manner and because of the eloquent way in which he presented his views, but it seems

to me that something ought to be said concerning the class of immigration that has entered the portals of this country since 1880. I would not have arisen and made any statement in respect to the proposition before the House, because, to be frank, I never regarded it with any degree of seriousness. I never for a moment entertained the idea that this Convention would place its stamp of approval upon the proposed amendment. But when I heard the gentleman from Ulster deliver that pessimistic prophecy concerning the menace that threatens our institutions—the prophecy with its woeful wail that our institutions are menaced and are destined to founder and decay because of the class of immigrants that has entered this country since 1880, I was bound—I would be derelict in my duty to my constituency if I had not arisen in my seat to offer a protest to that suggestion. I represent a district of over two hundred thousand people, and this district typifies and represents this so-called undesirable element that has entered this country since 1880. And I challenge the gentleman from Ulster county or any gentleman from any other county in this State to point out wherein the people of my district lack in sobriety, industry, honesty, willingness to work and patriotism, or wherein they lack in supporting the institutions of our country. These people go to the night schools and they want to learn our language. They respect the traditions of this country. Their children go to the public schools. They make the best scholars. They go to the colleges and universities and become men of standing in the community. They are law-abiding and respected citizens. They were brave and adventurous spirits who left the old world behind with courage and hope to win fame and fortune in the new. The same cry that was uttered to-night in this chamber respecting that class of immigration was uttered as early as 1819. You will remember the patronizing way in which the gentleman from Ulster said that the class of immigration that came to this country prior to 1880 was a blessing and benefit to the country and that, because of their sobriety, their industry, their alertness, their vigorousness and their patriotism, they have easily assimilated and become a valuable addition to the country. I agree with all the gentleman said concerning the immigration prior to 1880, and I say that the same applies with the same truth to the class of immigration that has entered the gates of freedom and liberty since 1880. I will read to you a prophecy made by pessimists as early as 1819, as to what would happen to this country if we allowed the Irishman, the Welshman, the Frenchman, the Englishman, and other north of Europe races, to whom such glowing tributes were paid this afternoon by the gentleman from Ulster, to enter

this country. Let me read to you from the Congressional Record, a report which was made on the question of immigration by the managers of the Society for the Prevention of Pauperism in New York city in 1819, nearly a hundred years ago. Now, what do they say? "First, as to the emigrants from foreign countries, the managers are compelled to speak of them in language of astonishment and apprehension. Through this inlet pauperism threatens us with the most overwhelming consequences." Again, later on they say: "This country is the resort of vast numbers of those needy and wretched beings. Thousands are continually resting their hopes on the refuge which she offers, filled with delusive visions of plenty and luxury. They seize the earliest opportunity to cross the Atlantic and land upon our shores. What has been the destination of this immense accession to our population, and where is it now? Many of these foreigners have found employment, some may have passed into the interior, but thousands still remain among us. They are frequently found destitute in our streets; they seek employment at our doors; they are found in our almshouses and in our hospitals; they are found at the bar of criminal tribunals, in our Bridewell, our penitentiary, and our State prison. And we lament to say that they are too often led by want, by vice, and by habit to form a phalanx of plunder and depredation, rendering our city more liable to increase of crime and our houses of correction more crowded with convicts and felons."

That was the prophecy made in 1819. These were the words of the philosophers and prophets of 1819, and their estimate of the immigrants who landed here in 1819. And what was the result of that prophecy? The gentleman from Ulster pays a most glowing tribute to these very paupers, to these criminals, to these undesirables, and he tells you they made a most admirable citizenship. I heard the statement that he made to the Speaker; he said, if you live twenty years hence, and if you should grace this hall and be a member of this Convention, you will regret that you did not vote for a proposition which would place restrictions and embargoes upon the privileges, so-called privileges of this horde that comes into this country and has been coming into here since 1880. With all due deference and with all due respect I say that the gentleman is much mistaken in his prophecy. I tell him that those people who came from Italy, from Russia, from Hungary, Poland and who came from Austria, they are identically the same type of immigration who came here in 1819 and who were characterized as paupers, criminals, dangerous characters and undesirables. But were they content with the fallacy of their prophecy? No. In 1847, in the year of the famine in Ireland, when thousands fled to

this home of liberty and freedom, how were the Irish immigrants received? Those alert, industrious, intelligent Irishmen, to whom such an excellent recommendation was furnished this afternoon, of whom it was stated they formed such an excellent part of our citizenship. Let me read to you again from the Congressional Record, page 2721. Now I blush to read you this part of the Record. It appears that a man ran for Governor upon the issue that there should be a restriction placed upon the right of Irishmen to come to this country and he was elected to the office on that issue. As my friend says the people who preached that propaganda of bigotry and narrow-mindedness were known as the Know-nothing party and the wail to-night is a resurrection and an echo of what was said in 1855 concerning the heavy Irish immigration. It finds expression in what the Guardians of Liberty have been preaching throughout the State during the last few years.

Mr. Barnes — Mr. Chairman, may I interrupt for a moment? May I ask you, sir, how the Guardians of Liberty or the foreign voters or members of the State are discriminated against, or any other organization in this State, by this proposal?

Mr. Burkan — They are not, Mr. Barnes; but in an argument in support of your proposition this afternoon it was stated that your amendment was necessary to protect us from the menace of the hordes that have been coming here since 1880 from foreign shores that they cannot easily assimilate; they do not grasp our customs; that they do not understand our principles; that they are bringing with them ideals antagonistic to American principles; that they are not in sympathy with our ambitions, traditions and ideals — and I am here to refute this argument and to show that the gentleman was incorrect and that his premise is false and that his statement is without foundation. The extent and the kind of emigration in 1855 were the causes of complaint of Governor Gardner, of Massachusetts, in his inaugural address, because, on page 978 of the "Acts and Resolves" of 1855, the Governor begins his discussion of the immigration problem by referring to the immigration to this country by ten-year periods, pointing out that from 1790 to 1800 it was small; that from 1800 to 1810 the immigration was small; that from 1810 to 1820 it was small; but he points to the fact, according to him, that from 1840 to 1850 it was 1,542,850. The reason for that high tide of immigration is clear to anybody who will stop to reflect upon conditions. I don't know how much of it was from Ireland, but I know the largest part was from the Emerald Isle when thousands of mothers and fathers with their little children fled to the old Bay State, to the refuge and asylum held out to them across the seas. Let me remind you of the recommendations that Governor Gardner and

his supporters made concerning Irish emigration: they recommended an amendment to our constitution prohibiting the exercise of the elective franchise to all of alien birth, qualified by naturalization, till they had resided in the United States twenty-one years, on the principle that the Irishmen who left Ireland in '55 were a menace to our principles. They recommended that no person should be permitted to vote who could not read and write the English language. Do you know that they disbanded military companies which had enrolled among its members persons of foreign birth? Do you know that they officially declared it was not safe, it was not wise, it was not statesmanlike, to have any such men in these militia companies? Do you know that they made all sorts of attempts at restrictive legislation and they made it an offense punishable by fine for any clerk of court in Massachusetts to issue naturalization papers to any man of this alien class? "You do not mean it," say you. "They did not go as far as that!" Yes, they did; and God only knows how far they would have gone if it had not been for a single thing. Soon after these days of 1855 and 1856 there came the call to arms, and it would be to you but the repetition of a familiar story to tell the history of the Irish and the Germans and other "despised aliens" in that war — men who were not wanted in times of peace, but who were most welcome recruits in time of war. Let me just give you some statistics on that line. A study carried on from official records of the nativity of 337,800 soldiers shows that 203,622 were born in the United States and 134,178 were foreign born. Of the 134,178 foreign-born soldiers, 19,985 were born in British America; 14,000 were of English birth; 12,000 were born in various countries other than those named; 36,000 were born in Germany; and 51,000 were born in Ireland. Just as in those days of stress, storm and danger the foreign citizens responded to the call to the colors so to-day in the hour of our country's danger or need the hordes that came here would make the self-same sacrifice and lay down their lives in the defense of the Stars and Stripes. Now that was the situation in 1856. You had the same cry, the same wail, and the same prophecy and I say to you, gentlemen of this Convention, that the people that I represent, the 200,000 foreigners or those of foreign birth, are good citizens, and they answer every test of good citizenship. I protest on behalf of the people of my district. They are people who have come from southern Europe — Russians, Austrians, Italians, Poles — but in every instance they have not been found wanting in their loyalty and devotion to our institutions.

They have sent to this Convention Mr. Potter. He is not one of their kind, but they know he was qualified to represent them

in this Convention. They know that he is a conservative; they know that he is a reactionary; they know that he does not preach doctrines which are dangerous to our institutions. They did not betray that spirit that was condemned here. Has it been shown at any time that they are the class of people against whom there ought to be restrictions, limitations and curtailment of privileges of the kind and character preached by the gentleman from Ulster? Now, gentlemen, these people that I have named, this undesirable element from southern Europe is filling a want in this country. They are taking the places of the Irishmen, they are taking the places of the Germans, they are taking the places of the Swedes, and of the other elements that constituted the immigration up to 1880. They are tilling your soil, clearing the forests, they are digging your trenches; they are building your railroads; they are constructing your buildings. They are all earnest; they are all industrious; they are sober, honest and ambitious; and I say that if you propose to carry this amendment upon that argument, that the element that has come here since 1880 is a menace, you will not only fail, but it will furnish an excellent campaign contribution to defeat the Constitution. I don't believe that it was seriously intended to support Mr. Barnes' proposition by an attack upon the people that have come to this country since 1880. There is absolutely nothing to warrant the statements that have been made here. Now I just want to advert for a moment to the proposition, and then I will subside. If there has been a demand for privilege in this country, if there has been a demand for immunity on the part of the working classes, I say the privileged classes are responsible for that condition. Those that sow the wind must reap the whirlwind. For years the wealthy class, the influential and powerful class, had its own way. Instead of treating their employees in a humane, kindly, and considerate spirit as they would treat their own children, they abused the trust and confidence that the government reposed in them. They worked these people long hours, took unfair advantage of them, made their lives miserable and unbearable, broke them in spirit and in strength, and the government had to come in, not only in the State of New York, but in almost every State of the Union, and enact laws which, I say, are of a privileged character, intended to protect and which do protect certain elements of our citizenship, against the greed, cruelty and rapacity of another element, but no complaint can be urged against the compensation act, the employers liability act, and all the other acts enacted by the Legislature for the protection of the life, limb and health and welfare of the workers. The employers sought to force the issue, and finally labor and those philanthropists who are interested in labor made themselves heard,

asserted their rights and, in consequence, every Legislature in every State of the Union has passed laws sought to be condemned by — which are condemned by Mr. Barnes, if not directly, at least indirectly by this proposed amendment. But if such a condition exists, I put the blame upon the privileged classes. They started it by abusing their power and responsibility.

Mr. Aiken — I agree with the proposer of this amendment that our idea of it depends upon our viewpoint of the function of government. Fifty years ago when Herbert Spencer's laissez-faire theory of government was in vogue it might have been all right, but we have come a long way since that. The idea that social legislation is a function of government has grown with increasing strength in all the nations of the world. It is not only in Germany that social legislation is a function of government, but even more so in England, the most democratic government in the world. Of course if our idea of government is that of a policeman with a big stick, who is simply to keep one man from treading on the toes of another, why, this theory of government is proper; but if you go beyond that and look at the government as a means of betterment of conditions among all the people, why, then this amendment should be adopted. Now the Anglo-Saxon race fought long for the principle of equality before the law, and that has long since been established. It is no longer an issue, at least not in this country, since the Civil War; and, except for slavery, not for a hundred years. But every age has its problems and it is not a problem in this age of equality before the law but greater equality of economic conditions and opportunities. And we must all realize that while there is theoretic equality before the law, in actual practice there is not. The man of power and of wealth and of influence, even before a court of justice, has a better chance. He can hire the best lawyers. He can appeal the case. He has the money to spend to wear out the poor man. I take it that one of the functions of social legislation is to equalize, is to give the underdog a chance, to remedy to some extent the natural inequalities that exist. And so these laws that have been referred to, the laws with reference to labor, eight-hour laws, and the workmen's compensation laws, and all the laws which go to help those who labor and those who have not the same economic advantages as ourselves — they tend to equalize the conditions among men. Now the Workmen's Compensation Law has been used here as an illustration and it is a good illustration. There may be a difference of opinion — no doubt there is — as to whether the Workmen's Compensation Law grants a privilege to a class. I don't think it does, but that is a question for argument. But I would agree with those who have spoken that it could not have been enacted if this clause,

and this alone, on that subject, was in the Constitution. But what happened with the Workmen's Compensation Law? The Legislature had this problem. We had the common-law doctrine of the responsibility of the master for his servant's acts and in our complicated system of manufacture and transportation it has come about that the master may be held liable for inadvertence or for acts which even the most careful men could not avoid and the result was that all employers insured against liability, all who had any number of employees. So the Legislature took this problem up and they said: "We will make the employers insure for the benefit of the employees" because the insurance companies fought those cases to the highest courts, and as we all know, it was only in a small percentage of cases where the employee obtained any redress. So they said, "We will make the employer pay a little more insurance so that it will be for the benefit of the employee." That is what happened. Simply compulsory insurance where before it was voluntary. And what is the result of that legislation? It was shown in the Wainwright Commission's investigation that out of every hundred dollars which was actually paid by the insurance companies for losses the workman got \$37. Sixty-three dollars of the \$100 went to the lawyers, and for expenses. Now the workman gets every dollar that the insurance company pays. He does not even have to go to the expense of a lawyer to assert his rights before the Compensation Commission. Now I say that that was a great advance in solving that problem. But certain gentlemen say that the Compensation Law is on the statute books and this amendment is as to what will occur hereafter. But how about amending the Workmen's Compensation Law?

Mr. Barnes — The workmen's compensation provision is in the Constitution.

Mr. Aiken — Certainly.

Mr. Barnes — This will not interfere with it.

Mr. Aiken — But how about future legislation?

Mr. Barnes — The workmen's compensation provision is in the Constitution; it is in Article 1, Section 19, I think. It is a provision of the Constitution. This proposal is that the Legislature shall not pass any bill of a certain character. It can in no way affect a specific provision of the Constitution.

Mr. Aiken — Supposing we wish to extend it to occupational diseases?

Mr. Barnes — That is a different question.

Mr. Aiken — Could that be done under this amendment?

Mr. Barnes — I think not.

Mr. Aiken — There is more reason for including occupational diseases under a law of this kind than there is for a law including

accidents because occupational diseases can be traced directly to the employment. Years ago in the prison in Auburn, when they had the contract labor system, they ground pots and kettles. The workmen there who were engaged in that would last about five years, if they kept at it because it would use them up; they had the grinder's phthisis. It is so with every occupational disease; they can be traced to the occupation in which the men are engaged, and there is more justice in occupational disease insurance than there is in compensation for accidents. Now shall we shut that off by an amendment of this kind?

Mr. Ostrander — I am sorry to interrupt, but I hold in my hand an example of the Workmen's Compensation Law. A man working in a pulp mill was caught in an unguarded set screw and the muscles of his forearm were torn across. He suffered a great deal of pain, and several weeks' loss of time. His employers would have been very glad to settle with him, but he was insured and after many months the commission has informed him that they will recommend an award of \$14.22. The inquiry is whether the law has worked out entirely to the satisfaction of the workman?

Mr. Aiken — The law may be imperfect. It may have to be amended. That is what I am contending for. There may be individual cases under any law which may be unjust, but there have been over 30,000 awards in this State since this law went into effect and the men have received the amount, not in a lump sum, but from week to week, so that they cannot spend it. It is a matter of support and they do not count upon the community for support. Now Dr. Schurman and General Wickersham have spoken about other privileges which have been granted by laws. Let me call the attention of the Convention to one that this Convention itself recognized yesterday and that is, in the law relative to suffrage we give a privilege to those in villages and towns of less than five thousand inhabitants. They do not have to make personal application for registration while the rest of the State does. Now it seemed to me that that is a privilege which may not amount to very much but it is privilege.

Mr. Betts — Is not that a privilege given by the Constitution and is not that the same as proposed by this amendment?

Mr. Aiken — It is a privilege.

Mr. Betts — That is the point. The people should say when you depart from equality.

Mr. Aiken — You take the National government. Here is the income tax. All incomes under \$4000 are exempt. There is a privilege. Of course, I am a Republican and I believe in a tariff, but I don't think the tariff necessarily spreads equally all over the country. I think sometimes the lawyers and professors in colleges

don't get much benefit from it. Now it seems to me that it is unwise to pass an amendment when we don't know where it is going to lead and I just want to call attention, not in criticism of the amendment, but to the 14th amendment of the United States Constitution. That was passed to protect the negro, after the War, and the result has been this: Out of 604 cases which had been decided by the United States Supreme Court on the 14th amendment up to 1910, 28 cases were where the negro had appealed to this provision of the Constitution and in five cases he received relief. But out of those 604 cases, 312 cases were appeals by corporations which invoked the provisions of the 14th amendment. So the 14th amendment which was passed to protect the negro has really become the magna charta of the corporations. Now the 14th amendment may be all right but if the people of this country had known what the effect of the 14th amendment would be do you think that Congress and the Legislatures would have passed it for that purpose? Now, it seems to me that we are ruled in this country by public opinion. Every opinion, as Mr. Justice Holmes said in the *Noble* case, tends to become a law, and when it becomes a dominant and preponderant opinion of the country it should become a law. And the Legislatures are the mouth-pieces of public opinion and I am not in favor of muzzling the Legislatures.

Mr. Bockes — As a member of the Committee on Legislative Powers, I wish to say a few words in favor of this proposal; at least, I wish to tell my own experience in my consideration of this measure, in the hope that it will be suggestive to some other delegates. There is something so terse and bristling and warlike in the language of this proposal that it is like the strong declaration of a strong man anywhere — it excites one's natural hostility and combativeness. I think my first vote was a very violent "No," but when I came to think over this proposal afterwards and tried to explain it to someone at home, I found myself restating it in language something like this: "The purpose of this proposal is to prevent the Legislature from passing laws that are not as fair to all as they are to any one, and which are not as fair to any one as they are to all." Now, I do not suppose the Committee on Legislative Powers is particular about the precise phraseology of this measure and yet that seems to be what bothers Mr. Aiken and many of the gentlemen who oppose it. If the language is so far-reaching as they suggest, in their sense of limitation, by all means, correct it, and in accordance with the idea which the Chairman of the Committee has explained. It is a far-reaching proposal in another sense, and that has been so ably explained by the remarks of Judge Clearwater this afternoon that I think nothing further

could be said to clarify that matter. In other words, when the Committee on Legislative Powers came to consider this proposal in its entirety it did appear to that committee that it was part of the duty of this Convention to look into the future and some of us looked at the English system of old-age pensions and compulsory insurance and free doctors, and I do not know what all, and we were not pleased with what we saw there, and we said we wanted to prevent the State of New York from getting into the condition in which England found herself at the beginning of this war. If I read the papers aright, it is a fact that many, if not a considerable proportion, of the ordinary workers of England had become habituated to the thought that the government was going to take care of them and of their wives and children if anything should happen so that all they had to do was to draw their wages and spend them in drink or whatever cheap entertainment appealed to them. Whereas, in France, in which country, if I am correctly informed, much less of this sort of special privilege has been granted by law, the ordinary workman has looked forward to the future with a view of always having his savings on hand to provide for emergency, with the result of a thrifty and continually improving people; whereas the English people, according to my reading, were at that time in much less fortunate circumstances a year ago. Now, as some one has stated, people may look at these matters in different ways, but, for my part, I do not want to see the people of the State of New York get the same idea of relying on the government that the people of England had a year ago. Now, in my consideration of this proposal and in the remarks of Dr. Schurman, I am reminded of an experience of mine. I had the honor to be a member of the Judiciary Committee in the Assembly of 1914, and, as I remember it, the very first bill that came before that committee for a vote was a bill to enable some doctor who had committed some crime, and therefore could not practice under the law, to renew his practice by a special bill enacted by the Legislature of the State of New York for his special benefit, because he had some powerful family and political influences behind him. And from that time on — I do not assume to say the proportion, but a large part of the time of our committee, working until two o'clock in the morning, sometimes and frequently going at it at nine o'clock again, was spent in explaining to the various members who had introduced bills the reasons why we could not allow special privileges, always as a matter of courtesy, going into the details of decent and respectable argument before we could turn down the bill. Why we got so tired of turning down requests for special privilege we took turns. Sometimes one would turn down three requests and another would turn down

three, and so on. If we could have had a provision like this saying that the Legislature shall not allow special privilege or anything that is not fair, it would have been a simple matter. We could have said, No, Mr. So-and-so, the Constitution provides that such a bill as this cannot be adopted except by amendment to the Constitution. Now I don't want to go into an elaborate speech because I have not given the time nor attention that the subject deserves; but if I understand the rules under which we are working now, we may safely, even if we are opposed to a bill like this, we may advance it to third reading; in the Assembly they will do that as a matter of courtesy, advance it to third reading so that any person reporting an important bill may have the members recorded on it one way or another. I believe that a matter of fundamental importance like this must be considered by the members of this Convention as a serious matter. I believe this is something of more importance than to get in such statements as this, "The power of taxation shall never be suspended, surrendered or contracted away." I believe that if we cannot extend the courtesy to a matter of such fundamental importance, of such vital interest, to my mind, to the future of the State we might better go back again to that State road problem and extend it somewhere down to the middle of Goose Pond.

Mr. Parsons — It is puzzling Mr. Chairman, to find out just what we are to discuss under the first sentence in this proposal, the sentence which says, "The Legislature shall not pass any bill: Granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State." My friend, Judge Clearwater, this afternoon, was led by that language to discuss the subject of immigration. My friend, Judge Hale, was led by the same language to discuss the right of an ex-President of the United States to go to Ohio and criticize the Court of Appeals of this State there. It reminds me very much of the parliamentary situation in the House of Representatives at Washington, when the House of Representatives goes into Committee of the Whole on the State of the Union on an appropriation bill. When the House is in that parliamentary situation, anybody can discuss anything. It seems to have been done here. I have been told that in the mind of the Chairman of the Committee on Legislative Powers, this phrase does not affect the police power, and yet it is the police power under which the Legislature acts in all of the social legislation which it enacts, and I presume he has come to that conclusion from the construction put upon the phrase by the courts of Oregon, from which the phrase is taken. I understand that this language appears in the Constitution of Oregon, and, parenthetically, I may say, that having borrowed it from

Oregon, it is not surprising to me that the gentleman now is for direct democracy and wants the people to vote on this directly. As I understand it the courts of Oregon have held that even when you have this phrase in your Constitution it does not interfere with the workmens' compensation or minimum wage legislation. But I presume, and I am therefore going to argue it on the proposition, that what it is really aimed at is that matter of social legislation. Now, I am also puzzled in discussing it on this proposition, which seems to be very much in the mind of Mr. Bockes, that this be submitted to the people, and yet according to my recollection there is pending before one of the committees here, introduced by the Chairman of the Committee on Legislative Powers, an amendment which would prevent the people from voting on any constitutional amendment except once every ten years.

Mr. Barnes — Have you a copy of that amendment before you?

Mr. Parsons — No, not right before me.

Mr. Barnes — The Legislature may submit to the people the question of holding a Constitutional Convention at any time, and it automatically recurs every ten years. It is provided to make the recurrence more certain.

Mr. Parsons — But, in the meantime, no amendment to the Constitution can be made. I am correct in that, am I not, Mr. Barnes?

Mr. Barnes — That is true.

Mr. Parsons — So that instead of submitting these questions from time to time the effect might work out that they would only be submitted once in every ten years. Now the Committee has offered through its Chairman an amendment striking out the word "minimum" in the last line, last paragraph, which would prohibit the Legislature from passing any bill "establish a minimum wage for service to be paid to any employee by a private employer." So as to read prohibiting the Legislature from "establishing a wage for a service to be paid to any employee by a private employer." But the people have already favored having the Legislature, under certain conditions, pass such and it is in the Constitution, in section 1 of article 12 there is a provision that "the Legislature may regulate and fix the wages and salaries, hours of work or labor and make provision for the welfare and safety of persons employed by the state, town, village or other civil division of the state, or by any contractor or sub-contractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof." The employee and the contractor or sub-contractor is in the service of a private employer. Now, it is sought by this amendment to interfere with that proposition, something on which the people have already voted and declared themselves.

Mr. Barnes — Mr. Chairman, may I interrupt once more? It says there, that is paid by the State. You have already read it; the person is employed and paid by the State. The contractor does not in any way change it, as to who is the real employer. It is not a private employer.

Mr. Parsons — But it is, legally. The State is not the employer. The contractor is the employer. Now as I listened to the very interesting address made by the chairman of the Committee on Legislative Powers, I understood him to make for the point that we should not be Prussianized, and to suggest that the start of our social legislation came from Germany. It did not come from Germany, but came from England. The man whose life was most identified with social legislation during the nineteenth century was Lord Ashley, the seventh Earl of Shaftsbury, and when he started his work they were first legislating as to the chimney-sweepers, the little chimney-sweeps. In 1817 the Parliament appointed a select committee, and it is said in Earl Shaftsbury's Life "The printed report reveals how children of a suitable size were stolen for the purpose, sold by their parents, inveigled from work-houses, or apprenticed by poor law guardians, and forced up narrow chimneys by cruel blows, by pricking the soles of the feet, or by applying wisps of lighted straw. The food and lodging of these children (some of them little girls); their sores and bruises; their peculiar diseases, the occasional death of some of them from suffocation, the physical and moral ruin for life of the survivors"—all this was set forth in the report. The result was that the Parliament legislated to protect the chimney-sweepers. At first, I believe it did not go very far and later it practically eliminated the system. At that time the situation in the cotton mills was very bad. There was a letter written by Robert Southey, the poet, to Lord Ashley in 1835, many years before Bismarck made the address referred to this afternoon. That was while slavery still existed in this country; and in that letter Southey said, "They who grow cotton are merciful taskmasters in comparison with those who manufacture it. Robert Hildyard (whom you know) told me the other day that Marshall, the Member for Leeds, showed him one of his manufactories, and upon his remarking the extreme delicacy of the children, replied they were consumptive, that a great proportion of them never reached the age of twenty, and that this was owing to the *flew* with which the air was always filled. He spoke of this with as little compunction as a general would calculate the probable consumption of lives in a campaign" and England legislated as to that. I think it was in 1846 that the great discussion took place in Parliament about limiting the hours of labor of children — the ten-hour bill, as it was called. It split up the parties and finally was carried. Macaulay spoke in favor

of it in a very brilliant and interesting speech, and interesting for this reason, that when you read it you will find in it every argument that is now made against any social legislation. But what I particularly wish to call attention to is this: The argument had been made that if they did limit the hours of labor of children, England could not compete with Germany; that in twelve hours a child could do more work than in ten, and therefore that it was economically disadvantageous for England to pass any such legislation. And Macaulay brushed that aside because he said while that might be true, still in the long run the nation which allowed its people to work the reasonably shorter hours would be the stronger nation, and this is what he said: "Never will I believe that what makes a population stronger, and healthier, and wiser, and better, can ultimately make it poorer. You try to frighten us by telling us that, in some German factories, the young work seventeen hours in the twenty-four, that they work so hard that among thousands there is not one who grows to such a stature that he can be admitted into the army; and you ask whether, if we pass this bill, we can possibly hold our own against such competition as this? Sir, I laugh at the thought of such competition. If ever we are forced to yield the foremost place among commercial nations, we shall yield it, not to a race of degenerate dwarfs, but to some people pre-eminently vigorous in body and mind."

Mr. Barnes — Do you understand that this proposal prevents legislation of this character?

Mr. Parsons — Mr. Bockes says it does.

Mr. Barnes — I do not so understand it.

Mr. Parsons — Well, I think the people so understand it.

Mr. Barnes — That might be.

Mr. Parsons — Well, if there is so much doubt about it then it ought not to be enacted.

Mr. Barnes — Just one moment. There is no doubt about the proposition; if you will read it carefully you will see it does not do anything of that character.

Mr. Parsons — Well, Mr. Barnes, with all due respect, the very discussion which has taken place here to-day shows that there is a great deal of doubt about it; therefore I shall discuss it on the idea that it is really aimed at that legislation. Mr. Aiken, a deputy attorney-general, so understands it. Now, what is the situation of Germany to-day? Some years ago England was agitating for a change in her tariff policy, and that focused the attention of her citizens upon Germany where there had been a protective tariff policy — a protective tariff worked out with the greatest care and this is what an English student writes of the present provisions to-day for the workmen in Germany. You may

think the picture is overdrawn, but we will see what its consequences are. "Is the workman without employment? All that municipal and associated effort, skilfully co-ordinated and efficiently directed, can do to find him work is promptly done. For the workless man who thinks he can better his prospects in a new home the *Herberge* and the Relief Station exist, and they offer the traveller hospitable lodging and food by the way. To the needs of the miscellaneous crowd of unemployed whose love of steady industry is not always above suspicion, labor colonies, conducted both on industrial and argicultural lines, minister in their special way. In the towns exceptional seasonable distress is more and more met by the provision of public works. To encourage the provident a method of insurance against worklessness has been introduced in some towns. Does the workman wish to change his dwelling? The municipality has a house agency of its own, at which all desired information and help can be obtained without charge. Does he wish to buy or build a house for himself? Public funds of various kinds — state, municipal, insurance, philanthropic — are available, and many millions of pounds have already been advanced in this way. Is money wanted on loan? The municipality acts as pawnbroker, and offers prompt relief, with absolute assurance of fair dealing. Is the workman in difficulty from want of friendly advice? There is no subject under the sun upon which the Municipal Information Bureau is not prepared to counsel him.

Have capital and labor fallen out? In the Industrial Courts are offered facilities for settling their disagreements expeditiously and without cost. Or, again, does sickness throw its shadow over the worker's home? The gloom is relieved owing to the fact that the needs of wife and children are supplied by the insurance fund to which he has contributed during health. So, too, in the event of accident, liberal allowances come from the same source, however long the incapacity may last. In addition, there are well-ordered public hospitals and convalescent homes, to which every rate-paying citizen may go for nursing and rest; and, better still, there is the wonderful system of healing agencies which has been set up by the insurance authorities, and which is at the disposal of all insured workers, of any age and of either sex. Has the last scene of all in life's strange eventful history come — the age of decay and helplessness? A pension awaits the weary time-expired soldier of industry, a pension not large, nor yet as large as it might be, but a welcome supplement to his own savings or to the sacrifice of children or relatives." Now a German authority, a large landed proprietor, who is the Prussian minister of commerce, said some years ago that he felt bound to the declaration

that he was well aware that the condition of industrial wage earners had on the whole become better in the course of recent decades, and that with some industries and classes of workmen the improvement has been quite considerable — altogether apart from the blessings which can hardly be over-estimated of the insurance against sickness, accident, old-age and infirmity — the Bismarck insurance. Some years ago there was a professor of Economics at Harvard named Ashley. He is now professor, I think, in the University of Birmingham. He has written a book on the rise of the German working classes, and he was led to his study in order to ascertain the effect which the protective tariff had had on Germany. In it, he says, as to the condition in Germany: "There is now a very marked contrast between the physical condition of the inhabitants of London and all other large English towns, and those of Berlin and all other large German towns. The German towns contain a much larger proportion of tall, well-developed men and women than do the English towns, and in no large German towns is it possible to find such masses of undersized, ill-developed and sickly-looking people as are to be found in the poorer districts of London, Manchester, Liverpool, Birmingham, and all other large British towns." There was a man named Shadwell, who made a study of efficiency, a comparative study between England, Germany and the United States. He was interested in this tariff question also and he said of Germany: "It is a wonderful achievement in which every unit has played a part, and the spirit which has brought it about is the spirit of duty and work. Here is the explanation of the two remarkable facts that a comparatively poor country, laboring under considerable natural disabilities, has raised itself to the very front rank of industrial productivity, and that its poorer classes though far less favored by circumstances, yet maintain a higher level of well-being and a far higher level of vitality than those of its wealthier rivals. The broad difference with the Germans is that they put more brains and more trouble into the task; and in particular they think it a good investment to apply both to the prevention of pauperism. Hence the State Insurance and the poor law outdoor relief, which must be taken together. They are largely responsible for the absence of misery and squalor in the mass, which strikes every observer, as compared with England and the United States." Now we know that in 1909, Mr. Bockes,— not before that, or 1908,— England started on a system of social insurance. I will give you the evidence, gathered fortunately before the war, of people who had studied the subject, to show what the result of this decried system of Bismarck's had achieved in Germany. Now I am going to read how they feel about it in Germany and

I shall quote from a man who is the protagonist of this social legislation in England — Lloyd-George. A few years ago it was common to decry Lloyd-George, but to-day he holds the most important post in the British ministry; he is the Minister of War Munitions. Speaking on the budget in Parliament on April 29, 1909, he said, in regard to insurance against invalidity, etc.: "Wherever I went in Germany, north or south, and whomever I met, whether it was an employer or a workman, a Conservative or a Liberal, a Socialist or a Trade Union Leader — men of all ranks, sections and creeds, of one accord joined in lauding the benefits which have been conferred upon Germany by this beneficent policy. Several wanted extensions, but there was not one who wanted to go back. The employers admitted that at first they did not quite like the new burdens it cast upon them, but they now fully realized the advantages which even they derived from the expenditure, for it had raised the standard of the workman throughout Germany. By removing that element of anxiety and worry from their lives it had improved their efficiency."

Mr. Bockes — Don't you think it is an entirely different matter to relieve an individual from responsibility in an autocracy like Germany than in a "democratic government like that of the State of New York, where the government relies wholly upon the responsibility of the individual."

Mr. Parsons — No, I do not. I do not think the autocracy has anything to do with it. Now I wish to compare the situation in Germany with the situation in the State of New York. In the year ending September 30, 1913, the last year of which the statistics have been published, the number of poor persons in the State of New York supported in county almshouses and in city and town almshouse institutions and those receiving temporary relief in the several counties of the State was 403,991 and the cost was \$8,401,318.43. That had been an increase of 24 per cent. in number and 37 per cent. in expenses since 1913. In the twenty years from 1890 to 1910 the number increased from \$175,341 to \$325,653 and the expenses increased from \$3,319,865.35 to \$6,096,958.95. The increase in numbers as well as the increase in expense was 85 per cent., but the population only increased 52 per cent. What happened in Germany in twenty years? The commitments to the poor and workhouses of Prussia were fewer by 50 per cent. than twenty years before although the population of Prussia had increased 22 per cent. Prussia with an increase in population had cut the number of poor persons in half, and we, with an increase in population, had still more greatly increased the number of the poor. Now the argument is made that this sort of thing demoralizes the workman. Now that

is not the testimony. In these things we should not trust to probabilities. We should investigate for ourselves and go to those who have investigated. Now one of those authors that I quoted from before says: "Moreover, to the possible plea that such a policy is incompatible with the spirit of self-reliance and the cultivation of strong individualities, the best answer is that by the consent of all of us, Germany is doing its own work in the world — and, as we are apt to think, some of ours as well — and is doing it exceedingly well." That was by an Englishman before the war. One of the delegates in coming to the Convention some months ago told me that he had a very interesting experience, that the train which brought him here was all decorated with flags and there were people out at the stations and the reason was that the engineer of the train had completed fifty years of service; that was his last run and he was to retire on a pension. Was he demoralized? Our great corporations are providing pension systems for their employees — to demoralize them? No, to increase their efficiency. Now I am not arguing now for any particular proposition, but it does seem to me that with the illustrations that are before us of what has happened elsewhere we should not put into the Constitution something which shall prevent, as time goes on, our working out carefully, conservatively, these problems. This afternoon Judge Clearwater warned us, those of us who might be living when another Constitutional Convention comes twenty years hence, as to what the situation then might be, if we did not pass this amendment. But my view of that situation, if we should pass this amendment, if it means what some of those who favor it say, is a very different one. I believe that with this strong trend that there is towards social legislation, achieving benefits — because the facts show it — you cannot deny it — if you should put a restrictive clause in the Constitution preventing such legislation, the day of constitutional-limitation government in this State might be over. No, I look forward to a world twenty years hence which will have made progress and which will have made progress directly along these lines. I appreciate that in the country districts these problems do not press heavily, but those of us who live in the crowded cities, who have some experience with conditions there, who, like Mr. Wickersham this afternoon, so long associated with the Association for the Improvement of the Condition of the Poor in New York, spoke from experience — we realize that there must be gradual development along these lines. I do not wish to frighten the Convention, but I believe that twenty years hence we will have risen to the point of a living wage — yes, a living wage — taking the position that the State not only will not allow anyone to work under unsanitary conditions and

for too many hours a day, but also will not allow anyone to work for wages that will not enable him to subsist healthily and will not allow employers to compete for labor to receive a wage upon which labor cannot live healthily. We will have that. By the way that is not a German, a Prussian scheme. That is an Anglo-Saxon scheme. They have no minimum wage in Germany. The living wage comes from New Zealand, Anglo-Saxon New Zealand, Anglo-Saxon Australia, Anglo-Saxon England and Anglo-Saxon parts of the United States, for it is already in nine states. It is even in the state of Oregon, from which a part of this paragraph was obtained. I believe that not only will we have that but we will go to the point of having insurance of workers against sickness and against old age and that it will not demoralize them, but that it will relieve their anxieties and bring us healthier, happier and more contented people.

Mr. Sears — Mr. Chairman, I am far from desiring to appear as a supporter of special privilege. I fully recognize the sincere effort of the gentleman from Albany in offering for our consideration this amendment to bring about the democracy of liberty, equality and fraternity. Nevertheless, I earnestly oppose the adoption of his amendment. I have no intention of following the lead of Mr. Barnes, Mr. Schurman and Judge Clearwater into a philosophic discussion of the rights and privileges of the citizens. I propose rather to consider the measure as a working enactment and as such I am opposed to it because I believe it to be both impractical and unnecessary. As we look about us upon this social organization of ours we see a host of inequalities and privileges and immunities. And, in my judgment, we will continue to see them as long as the State endures. We see not only the privileges granted to the working classes to alleviate their condition, but we see privilege in the hands of the capitalist and employer. We have heard a somewhat detailed statement from Mr. Wagner of the enactments in the interest of social justice, to use the popular phrase, and I do not intend further to discuss it, except to say that, in my judgment, the great mass of it has been beneficent and has, I am sure, the approval of the whole people, a fact which makes me regret the political color which Senator Wagner attempted to give to this class of legislation. But, aside from this, we see corporations enjoying privileges granted to them by special act — franchises not only to be a corporation but to exercise rights denied to all the other members of the State. These are certainly privileges and immunities within the first subdivision of the proposal. We see classes of individuals relieved from jury duty, others relieved from military service, women denied the right to vote. We know of classes of citizens who are

granted licenses to carry on their respective businesses; for example, saloonkeepers enjoying the ownership of a license, the number of which is limited so that no further licenses are procurable by other persons. We have whole class of citizens exempted from the provisions of the Sunday laws. We ourselves as members of this body enjoy an immunity from arrest. Now I admit that some of these inequalities may not come strictly within the inhibitions of this act but most of them do. And they are referred to here to show how impossible it will be to restore that democracy of equality which is the ideal of the introducer of this measure. Why, Mr. Chairman, no longer ago than this very morning we approved a measure which expressly authorized the Legislature to grant immunity from taxation when included in a general law and passed by a two-thirds vote. We have not yet reached the condition where we can legislate equality into society.

The supporters of this measure say that they are not seeking an absolute prohibition of privilege but only a prohibition of legislative action. Of course, that is as far as prohibition can go. No one would deny to the people the right to amend this Constitution. We are trying in this Convention to frame a working Constitution, not one which is so bad that it can be defended only by the fact that amendment or repeal is possible. Are the supporters of the measure so enamored of the referendum that they would do away with representative government in this respect and add to direct primaries these numerous plebiscites? Are we to have the doctrine of constitutional recall whenever classification is necessary or expedient either under the police or the taxing powers? Such a proposal can be justified only on the principle that representative government has failed, and yet this same proposal is urged by those, who, I am sure, would be among the last to declare their opposition to direct control by the electors in the form of direct primaries or in the form of the initiative and the referendum. Now, let me turn to the second subdivision. Under this, public money — that is, money raised by taxes — can be paid out only for three purposes; for the purchase of materials; for the payment for services, or in recognition of services. This is a direct prohibition on all other payments. I pass over the fact that there is a prohibition seemingly against the purchase of real estate, because that, of course, must be an oversight and easily subject to amendment. But three classes of payments occur to me which would be prevented absolutely if this amendment became a part of our Constitution: First, The State and municipalities are denied the right to appropriate money to pay for their tortious acts. Some little time ago an accident occurred at Syracuse on the Fair Grounds where an automobile ran off the track and

several persons were injured. There was no statute under which these persons were entitled to recover damages against the State. An act was passed, however, allowing them to present and prosecute their claims in the Court of Claims. That statute recognized the responsibility of the State for its torts and allowed the State to pay its money to those individuals. Under this second subdivision, that could not be done. So in the case of damage claims against municipalities there is a prohibition in this provision against the appropriation of money for the purpose of paying those damage claims. Second, The State could not recognize its responsibility and pay persons whose claims rest not in legal right but in a moral obligation and in justice. For example, in the case of *Matter of Borup*, 182 N. Y., a property owner was injured, that is, his property was damaged by the change of grade of the street upon which the property abutted. There was no statute allowing such person to recover for the damage to his property and under the common law no such right of action exists but a statute was passed which enabled the municipality to pay that individual property owner for the damages which had been caused to his property by the act of the municipality in changing the grade, and the Court of Appeals said, that "while there was no legal right to damages prior to the act in question, yet the claim of the property owner to compensate him for the injury, was founded in equity and justice and it was competent for the Legislature to recognize the justice of such a claim by making it obligatory for the town to pay it when the amount was ascertained in due course. The payment of compensation by the town to the property owners which the statute provides for is in no proper sense a gift or gratuity of either money or property of the town or a loan of its money or its credit to an individual. * * * There is no provision of the Constitution that restricts the Legislature from providing for the payment by a municipality of claims against it that are founded in equity and justice and which could have been authorized originally." Such also are claims which are paid by towns for injury to property caused by mobs. Such claims also arise when property is destroyed to prevent the spread of a fire. And yet all those claims do not rest in a legal obligation but are founded in right and justice and yet under this statute, under this measure, no appropriation could be made to pay the same. Third. No emergency could be taken care of by a money contribution, no matter how desperate were the needs or pressing the occasion. No, this is not a narrow construction as Judge Clearwater would have us believe. It is absolutely within the meaning of the phraseology. No help for those in distress

could be voted by the Legislature, but of course it would be possible for the people to pass a Constitutional Amendment some time in ten years so that this could be done.

As to the third section of this Proposed Constitutional Amendment I will make no comment except to say that I agree with Senator Wagner that it is doubtful whether the State of New York is yet prepared to adopt the principle of minimum wage, but, that question, in my judgment, is one which can only be determined after much study and full considerations. It is not a subject for this Convention to decide but should be left to the Legislature to investigate and determine. But, Mr. Chairman, is this proposal necessary? To this I answer, no. We have constitutional guaranties to prevent the State and its municipalities from making voluntary contributions which all would condemn. The ninth section of the eighth article of the Constitution contains such a prohibition in relation to the funds of the State and reads: "Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes." So much as to the prohibition against appropriation of the property of the State. It cannot be given in aid of any association, corporation or private undertaking. Secondly, the tenth section, the beginning of it, in relation to the funds of a city or any other civil division of the State, says: "No county, city, town or village shall hereafter give any money or property or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation," and then follows a provision allowing for the support of the poor.

But we are not confined to these two enactments alone. We have the constitutional protection of the Fourteenth Amendment. We are guaranteed that our liberty and our property, as well as our life shall not be taken without due process of law and that we shall not be denied the equal protection of the laws. That means that all persons similarly situated shall be treated alike, that the power to classify shall only be used when it is in due relation to the object of the classification. With these fundamental protections, we need not fear harm from any Legislature but we can safely leave our representatives to work out the problems for the good of all the members of the State.

Mr. Austin — Mr. Chairman, it would indeed be presumptuous

for me to endeavor to make a defense of this proposal after the remarks which have been made about it by Mr. Barnes and by Judge Clearwater. That I do not propose to undertake. But it seems to me, that in view of what has been said by those who have spoken after them it may be very profitable for me, in my way, to undertake to answer some of the arguments which have been made against it as I have noted them as the debate progressed. Most of these arguments appeal to me as having been made through careless and hasty reading of the proposal. My own personal view is that this proposal does not do some of the things which it is said it does do. In my humble judgment, some of the opponents of the measure have conjured up from its pages creatures and happenings that can never exist if it should become a part of the basic law of this State. I have listened, and I have listened without prejudice, for some argument against the proposal which would appeal to my reason. I, like Judge Clearwater, have been amazed at some of the legal arguments which have been advanced in connection with this proposal, considering those from whom the arguments came. I wish to refer to a few of them. Now Mr. Wickersham spent a considerable time discussing the definitions of the term "privilege" and "immunity," and he said that the enactment of this provision would prevent the passage of any law applicable to infants not applicable to adults. Those were his exact words. Now it seems to me too clear for argument that that statement, in the main, at least, is incorrect. In the first place, as applied to the large majority of the arguments, this proposal does not affect any immunities or privileges which now exist. And therefore, it would not apply in any event unless the Legislature sought to give some new privilege and immunity to these infants. But, in the main, the ordinary law affecting the relations and interests of an infant as opposed to those of an adult would not be affected in the slightest by this provision: as, for instance, a law limiting hours of employment of a minor. Now, do you mean to tell me that such a law grants a privilege — or, an immunity, to say that he cannot work more than five, six, seven, eight hours a day? Why, to my mind that kind of a law does not grant a privilege or an immunity, but denies to him a privilege which other people have if they are adults, and therefore, it seems to me it is entirely not covered by this proposal at all. Now, Mr. Wickersham's other specific instance was that this would deprive the State of the right to do any charitable or eleemosynary work. Now, I cannot possibly interpret this proposal in that way. It seems to me that Judge Clearwater covered that subject very clearly as to this particular question, but I desire to point out that this proposal simply deprives the State of the power to pay money to the particular

individual who may be an object of charity. In no way, shape or manner does it deprive the State through its agents from purchasing provisions if it wants to or from taking any care it desires to of those who need charity or those who are wards of the State by reason of insanity or some mental affliction. I cannot see that — except in so far as it prohibits the actual giving of money to some person who is an object of charity, I cannot see that this provision —

Mr. Wickersham — Where would the State get the right under this measure to make provision for any such class of people that you refer to? Would they not enjoy a privilege if they were boarded at the expense of the State in an institution maintained by the State?

Mr. Austin — Most assuredly not.

Mr. Wickersham — You say most assuredly not.

Mr. Austin — I say most assuredly not.

Mr. Wickersham — Does the language — read the language. Of course it is easy to say “most assuredly not,” but interpret the language, read the English language as it is spoken and as it is printed and you can not say “most assuredly not” with any degree of verity.

Mr. Austin — Oh, yes I can; I beg to differ with you on that. I can say it with what is to my mind convincing certainty.

Mr. Wickersham — You ignore the English language.

Mr. Austin — This is the way that I interpret this, and it seems to me it is the only logical way to interpret it. Any person, if he chooses to become a pauper, can avail himself of the privileges of a pauper. I say the person who is an inhabitant of a hospital for the insane is not receiving any special privilege of any kind, although he may in that particular instance be supported actually by the State. He is a ward of the State, and I cannot see that he is receiving a special privilege or immunity, and while Mr. Wickersham says that he can cite a thousand cases, a thousand similar instances, of payments of which would be prohibited by this proposal, I must say that unless the other nine hundred and ninety-eight are more convincing than these two they do not carry a great deal of weight with me. Now, Mr. Wagner says that this proposal is reactionary; and he says that all present happiness and prosperity is due to the passage of humanitarian and social justice legislation. Well, I don't know just exactly what to answer to that, but I can say that my own personal belief is that more of the present prosperity and happiness of the country is due to the due process clause of the Federal Constitution than it is to the great majority of the so-called social justice legislation that we had in this State. But I want you to ask yourselves if we have this

much-vaunted happiness and contentment. Are the laboring people of this State of New York growing more contented and more happy? You will have to answer that yourself. But it has not been my observation that they are, I am frank to say, and I ask you what country — and in fact it has been pointed out by Mr. Parsons that England has initiated much of this so-called social justice legislation, with a great deal of which I have the highest sympathy. But I also want to point out that now when the war clouds hover over this country that has enacted so much social justice legislation, they cannot get the miners to mine the coal, or the men to manufacture the munitions, in some instances, except at the point of the bayonet; and, as for me, if that is to be the result of more of this social justice legislation, I am frank to say that I don't want to see too much of it. Now, Mr. Wagner said this would prohibit the passage of a bill prohibiting women and minors from working nights. I have already covered that objection in what I said about minors in the first instance. That does not grant them any privilege or immunity; it takes it away, and the same thing may be said about the other legislative acts to which he specifically referred — the tenement house law. Can anybody here say that the passage of the tenement house law conferred a special privilege upon anybody? It took away privileges which should have been taken away. It did not confer any immunity. And all these things lead me to reiterate the fear which I expressed in the first instance, that possibly this proposal does not go far enough, instead of, as some of you seem to fear, going a great deal too far. Mr. Wagner also said that if you submit this to the people, you will hear the answer in no uncertain terms. Well, I believe that is true. I may be just old-fashioned enough to believe that if you can actually get the people to think about this proposition — I am not speaking about this particular wording, but about the idea intended to be conveyed — if you can actually get the people to think about it, you won't get the answer Senator Wagner seems to expect. Senator Wagner further said — and you will recollect that he worked himself up into a great passion over it — that if you passed this bill, you could not appropriate a cent of the public money to take care of the blind of the State, and yet Mr. Sears not over ten minutes ago read the provisions of section 9 of article 8 of the Constitution, specifically giving the right to appropriate moneys for that very purpose. That is why I say some of this criticism is the result of hasty and inconsiderate reading of this proposition as it is associated with other propositions of the Constitution. Then Doctor Schurman spoke about this proposal, and the first thing that he did was to ask what particular evil it is hoped will be avoided by the proposal, and I want to answer to

that frankly, that I don't know because I cannot imagine — I cannot foresee what requests are going to be made of the Legislature in the years to come, as special privilege comes knocking at its door. So I cannot tell you just what evil will arise in the future that this proposal, if enacted, into our basic law, would prevent; but in view of the experience of the past 15 or 20 years, I am pretty certain that it would prevent something that some agile mind will propose.

Now he says — he cites an instance of the kind of a law that would be prohibited by this proposal. He refers to the great special privilege of quiet which he enjoys at Lake George by reason of the fact that there is in existence a law prohibiting the operation of a motor boat that makes a noise. Well, all I have to say to that is if he thinks that that is a correct interpretation of special privilege, he is beyond hope, so far as I am concerned. And, as thrown into his argument, it reminded me very much of the definition of the amazing narrative of Pooh Bah in the Mikado, mere corroborative detail intended to give a verisimilitude of truth to an otherwise unconvincing argument. He says the proposal is inconsistent because it leaves with the Legislature the power to enact law relating to property, to domestic relation, and to the protection of life and the person. I don't know whether to infer from that that he would be for the proposal if it took away from the Legislature the right to do those very things, but it appeals to me as a most strange and unusual argument, and he forgets, in making it, that as to those very things we have constitutional protection, which some of us hope we will have in the future, with reference to matters of special privilege, and that is the provision which is contained in the first section of the bill of rights of the Constitution of the State of New York, and in those of the fourteenth amendment to the Constitution of the United States. In a most eloquent peroration which I wish I could emulate, he said that we have inherited a principle, that we have inherited a priceless nationality, which we are constantly readjusting to changing conditions; and of course he is right about that. But my fear is, gentlemen, that we are so readjusting it that we will not hand down to our children the same priceless heritage which we received. Now, Mr. Burkan gave some very interesting statistics and information concerning immigration. With practically all of what he said and what he quoted I thoroughly agree, but I cannot see that it is in the slightest degree germane to this discussion. Therefore, I do not say anything about it. Mr. Aiken rose to a defense of the workmen's compensation act, with which I have no quarrel, but I ask you what is the use of producing the workmen's compensation act as an argument against this proposal when, as pointed out by Mr.

Barnes, it is already the existing law of the State, authorized with any reasonable extension by the Constitution, and cannot be in any way affected by this proposal. He refers to occupational diseases and says that that would be — that this proposal would prohibit State insurance for occupational diseases, or compulsory insurance for occupational diseases. But there is another instance of hasty and ill-considered criticism of the proposal, because it seems to be conceded that compulsory insurance for occupational diseases is now prohibited by the Constitution, and, whether you pass this proposal or not, you are still prohibited from that form of compulsory insurance unless you pass the proposal which is on the General Orders Calendar here and comes from the Committee on Industrial Relations, permitting compulsory insurance for occupational diseases. So this criticism is based on ill-considered and hasty reading of the proposal, and without considering the other pending amendments which are on our desks at this moment. Now, Mr. Parsons. I didn't gather a great deal from his remarks, except his complaint that this discussion had covered so wide a field; but I must venture to remark that until he arose to his feet it did not extend to England and Germany, which, I understand, will not be affected by this proposal if it is enacted into the Constitution of the State of New York. He made some argument with reference to the prevailing rate of wages, a provision in the present Constitution. But what of that? It is there. It is not affected by this proposal, so how can it be an argument against it? He talked most of the time about the English social legislation. He talked about, most of the time, about English social legislation, and concerning that I have already expressed myself. But I wish to ask him and I wish you to ask yourselves whether you believe that during all these years of increasing social legislation in England, there has been in England a greater opportunity for the individual. Has there been more happiness and content? Has there been more individual or general prosperity than there has been in the State of New York? Gentlemen, if his socialistic prophecy comes true, there are some of us who hope that we will not be here twenty years hence to take part in the next Constitutional Convention. Now, Mr. Sears, started with the thought that the right to form a corporation is a special privilege. That is beyond me. I don't know why any of us, anybody in the State of New York, cannot get together and form a corporation; so I confess I cannot see how the right to form a corporation is a special privilege.

Mr. Wickersham — Is not the grant of a charter of a corporation not made by general law to a certain number of individuals. It is the grant of a special privilege. Hasn't it been so adjudicated?

Mr. Austin — Yes, but my personal recollection is that there is some provision in the Constitution against the grant of a charter except by general laws.

Mr. Wickersham — The gentleman is wrong; it is not by general provision. In every volume of the laws you will find acts granting charters of incorporation.

Mr. Austin — Well, then, if that is so, I will simply say it ought not to be so.

Mr. Wickersham — That does not answer the question.

Mr. Austin — Mr. Sears also pointed out what he said was an instance of personal immunity or privilege, stating that we members of the Constitutional Convention have certain privileges and immunities not enjoyed by the rest of the electors or the citizens of the State, but how did we get them? We get them because the people by a vote approved Chapter 819, of the Laws of 1913. That is just exactly how Mr. Barnes proposes that those who are to receive special privileges shall get them. Now, Mr. Sears made what are to my mind two valid objections to this bill and I am not sure but that he made three, when he referred to the classes of payments that are prohibited by this article. As to the first two acts of the State or a municipality, or the right to liquidate moral obligations I think he is entirely right and it ought to be amended. As to the third, a great emergency, I am not so entirely clear, because I suppose he refers to something like a great calamity where the State might desire to assist temporarily persons who were injured in this great calamity. I am not sure myself as to whether they would not do that anyway, because they would not do it by direct contribution of money, I don't think that is ever done, but it would be done by the purchase of supplies, clothing, food, shelter, etc., and rendition of assistance in that manner which to my mind would not be prevented by this proposal, but as to the first two I have no doubt he is entirely correct. Now, just a word in conclusion, Mr. Chairman, as the hour for adjournment is here. I simply desire you to ask yourselves, as I have tried to ask myself, what is there in this proposal, in its final analysis? It seems to me that it is the simplest thing before this Convention, that has come before us, or that will come before us. The idea — and I do not myself see how I can express it in better language, because I have thought and thought and thought of how to express it differently — the idea is that when one class of individuals desires a special privilege, they shall get permission of a majority of the electors of the State before they have it. Now that is all there is to it, and to me that is not a reactionary proposal — it is delightfully progressive. I hope that politics will not make cowards of us all.

Mr. Wickersham — Mr. Chairman, I move the Committee do now arise, report progress and ask leave to sit again.

The Chairman — It is moved that the Committee do now arise, report progress and ask leave to sit again. Those in favor will say Aye, contrary No. The motion is carried. (President Root resumes the Chair.)

Mr. J. S. Phillips — Mr. President, the Committee of the Whole has under consideration General Order No. 25, has made some progress, but has not completed its consideration, and has requested me as its chairman to report that fact to the Convention and ask leave to sit again.

The President — The question is on granting leave to the Committee to sit again. All in favor of granting the leave will say Aye, opposed No. The motion is agreed to and leave is granted.

Mr. Wickersham — Mr. President, before adjournment might I ask the delegates to remember that to-morrow there is set for a special order a provision relating to Home Rule for Cities which was a special order for to-day, and discussion upon that measure will probably begin promptly after ten o'clock. The discussion under the special order will continue, if not finished to-morrow, through Saturday, under the rule adopted by the Convention. We are to have two sessions on Saturday, and it is quite possible that it may be necessary to order a call of the House on Saturday morning. May I express the hope that delegates will find it convenient and remember that Saturday will be occupied in all probability by one of the most important discussions that have come before this body.

Mr. President, I move we do now adjourn.

The President — The Convention stands adjourned until ten o'clock to-morrow morning. Whereupon at 10:35 p. m. the Convention adjourned to meet at 10 a. m., Friday, August 13th, 1915.

FRIDAY, AUGUST 13, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Most gracious God, Thou who art the inspiration of all our best desires and the support of all our worthiest endeavors, grant to hear us as we come to Thee this morning with our praises and our petitions. As the day returns, laden with manifold tokens of Thy loving kindness which call for our gratitude and vocal with calls for service which challenge our wisdom, our strength and our skill, grant unto us

such a spirit of sincerity that our gratitude to Thee may find its fullest and highest expression in faithful devotion to our daily duty. Help us to realize that the measure of our endowment, equipment and opportunity is also the measure of Thy confidence in us and of Thy expectation from us. So may we put the last jot and tittle of our ability into our work and may we find our reward in those unfailing satisfactions which abide in the heart of him who does the best he can with the gifts that God has given him in the sphere appointed unto him and during the time allotted unto him. So may we serve our day and generation according to the good counsels of our God, For Thy Name's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal is approved as printed. Presentation of memorials and petitions. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Reeves — Because of the necessity of my being in New York, I move that I be excused from the meetings of the Convention this evening and to-morrow.

The President — All in favor of granting the excuse from attendance of Mr. Reeves this evening and to-morrow will say Aye. Contrary, No. The excuse is granted.

Mr. Schurman — Mr. President, on Wednesday the Committee on Revision and Engrossment recommended a verbal change in Proposed Constitutional Amendment No. 749, Int. No. 698. That change was to drop out the word "thereof" and substitute in its place "of the State." The Committee on Education in bringing that before the Committee of the Whole asked that the change be made, but no formal motion, for some other reason or other, through inadvertence, was made to that effect. I move that the report of the Committee on Revision and Engrossment, recommending this change, be adopted.

The President — The question rises on the motion to agree with the report of the Committee on Revision and Engrossment, including the change indicated by Mr. Schurman. All in favor of the motion say Aye. Contrary No. The motion is agreed to.

Mr. Wickersham — In that connection, when the Committee on Revision and Engrossment made its report a few days ago on a number of bills that had been referred to it, I moved that the bills as reported by it, be printed for the information of the members of the Convention. I do not find those bills on our desks. Have they been distributed?

The Secretary — Yes.

Mr. Wickersham — If they have, I withdraw what I said.

Mr. Wood — Mr. President, I ask to be excused from attendance from 4 o'clock to-day until 8:30 Monday evening, because of an important engagement.

The President — All in favor of granting the excuse requested by Mr. Wood from 4 o'clock to-day until 8:30 o'clock Monday evening will say Aye. Contrary, No. The excuse is granted.

Mr. Tuck — Mr. President, Mr. Jones, delegate from the forty-fifth district, has been called to his home unavoidably and he requested that he be excused until the Monday morning session.

The President — All in favor of granting the excuse requested by Mr. Tuck on behalf of Mr. Jones, say Aye. Contrary, No. The excuse is granted.

Mr. Lindsay — Mr. President, on account of having to attend to some other official duties I would like to be excused until Monday morning.

The President — All in favor of granting the excuse requested by Mr. Lindsay say Aye. Contrary, No. The excuse is granted.

The President — Reports of standing committees.

Mr. Wickersham — Mr. President, from the Committee on the Judiciary, I present a report and a proposed constitutional amendment.

The President — The Secretary will read the report and the amendment.

Mr. Wickersham — Mr. President, I move that the report be considered as read and printed in the Record. The report is quite long.

The President — It is moved that the report accompanying the proposed constitutional amendment reported by the Committee on the Judiciary be considered as read and printed in the Record. All in favor of the motion say Aye. Contrary, No. The motion is agreed to.

REPORT OF THE COMMITTEE ON THE JUDICIARY RELATIVE TO THE PROPOSED AMENDED JUDICIARY ARTICLE

AUGUST 12, 1915.

To the Convention:

Your Committee on the Judiciary has had referred to it by the Convention 153 Proposed Constitutional Amendments, almost all of which apply to some portion of Article VI of the present Constitution. It has given public hearings to the proposers and to all others who have expressed a desire to be heard respecting these measures, as well as to representatives of the State Bar

Association and of Associations of the Bar of cities and counties, with respect to these and many other matters concerning the administration of justice. It has had the benefit of the personal attendance before it of the Chief Judge and of all the living ex-Chief Judges of the Court of Appeals, the Presiding Justices of two of the Appellate Divisions of the Supreme Court, Justices of the Supreme Court, County Judges, Surrogates, and numerous other officials and citizens, and has heard a full expression of their views upon matters within the competence of your Committee, besides which it has invited and received written expressions of opinion from many other judges, lawyers and citizens. The statements, views and recommendations thus submitted have been carefully considered, and your Committee has prepared and herewith reports an amended Judiciary Article to take the place of the present Sixth Article of the Constitution, and recommends its adoption. Before describing the proposed changes, a few words may properly be said as to the prime considerations which have controlled your Committee in its recommendations.

LAWS DELAYS

There is no subject affecting the welfare of the people, which has occasioned more complaint in recent years than that of delays in the administration of justice, and your Committee has given especial consideration to the present condition of the administration of the law in this State, for the purpose of ascertaining, first, to what extent undue and unavoidable delay occurs in the administration of the law; second, the causes of such delay, and third, by what provisions these causes may best be removed.

No statistics are available from which to determine the extent of the undue delay which occurs after actions are commenced and before they are brought to issue and placed on the trial calendars of the courts. But that the Code of Civil Procedure furnishes ample opportunities for such delay through the various interlocutory and procedural motions which it permits or invites, is well known to all practitioners. Delays in securing trial after a case is on the trial court calendars at the present time are not so great as they were a few years ago, and these delays, in the opinion of your Committee, are due in far larger measure to litigants and their attorneys, than to the organization and conduct of the courts. Nevertheless, even when both parties are ready and anxious for trial, it requires a period of from eight months to one year after a case has been placed upon the trial term calendar in the first judicial district and in several of the counties in the second and ninth districts before it can be reached for trial. About three months or less is required at special term in the

counties of New York and Kings, and a somewhat longer time in other counties in the districts mentioned. In the Appellate Divisions of the Supreme Court, and in the Appellate Terms, in the first and second departments, cases may be reached for argument at the monthly term to which the appeal is taken; but in the first department, the volume of appeals and its continued increase are such, that your Committee is satisfied that without some radical relief the appellate courts cannot continue to keep abreast with the business before them. In the Court of Appeals, nearly two years necessarily elapse between the filing of a return on appeal and the hearing, unless the cause is preferred by law. The Court of Appeals has made up no calendar of pending cases since May, 1914, and on May 21, 1915, there were 622 cases pending undetermined in that court, including the undisposed of cases on the calendar and those in which returns were filed after the calendar was made up.

CIVIL PROCEDURE

Underlying all these conditions, is a more fundamental cause with which your Committee has sought to deal, and that is the character of the civil procedure prescribed by law for courts of record in this State. The vice of this system lies, not simply in the enormous body of complex and conflicting legislative rules which constitute the Code of Civil Procedure, but in the uncertainty of those rules, resulting from constant legislative tinkering.

The entire legal profession, as well as representative public bodies of various kinds, have for several years past advocated a change in the present complicated and unwieldy system of judicial procedure established by the Code, and the technicalities and uncertainties resulting from constant legislative amendment of it. In recognition of this demand, the Legislature in the year 1913 constituted a commission which at its last session submitted a report embodying a short practice act in seventy-one sections, and a body of rules for the regulation of procedure in the principal courts of record in accordance with this practice act. The report was transmitted to the Legislature by the Governor on April 21, 1915, and, pursuant to his recommendations, the Legislature promptly appointed a joint committee to examine the same and report upon it at the 1916 session. While the time permitted for its examination has been too short to justify your Committee in recommending that the Legislature be required to enact this particular measure into law; yet the principles upon which it is framed are those which have been almost universally

approved and advocated by the bar, and your Committee therefore feels justified in reporting a provision making it the duty of the Legislature to act upon the report at its next session, and to enact a brief and simple practice act,—whether that now recommended or another — and adopt a separate body of civil practice rules for the regulation of procedure in the principal courts of the State. For the purpose of ending the practice of constant legislative amendment, which hitherto has rendered the law of civil procedure uncertain, and thus fostered and encouraged vexatious and unnecessary litigation and delays in the administration of justice, your Committee recommends that the Legislature be empowered at intervals of not less than five years to appoint a commission to consider and report what changes, if any, should be made in the law and in the rules governing civil procedure, that the Legislature shall act upon the report of such commission by a single bill, and that subject only to this provision, the power to make and alter the rules governing civil procedure be vested in the Judges of the Court of Appeals and the Supreme Court, and the Legislature prohibited from enacting any law affecting the same except at the request of those Judges. The enactment of this provision will in the opinion of your Committee constitute a long step forward in the simplification of the civil procedure of this State.

SUPREME COURT COMMISSIONERS

Your Committee has also provided for the appointment by the Appellate Divisions in the First and Second Judicial Departments of such number of Supreme Court Commissioners as they may deem necessary who must be members of the bar of not less than ten years' standing and who shall not practice law during their tenure of office. Such Commissioners are to have power to act as commissioners to fix compensation when private property is taken for public use, and to perform such other and further duties as may be devolved upon them by special order or rule of court.

These commissioners may be utilized under the new practice rules to determine many of the questions of procedure that now occupy the attention of the courts to the exclusion of more important matters.

OFFICIAL REFEREES

Your Committee has also provided for a continuance of the official referees, heretofore appointed pursuant to law from among judges whose terms of office have expired, and requires that in the future they be appointed by the Court of Appeals from among

judges of the Court of Appeals and by the Appellate Divisions from among justices of the Supreme Court whose terms have expired and who at the time of their retirement shall have served at least twenty years as judges of any court of record, or at least one full term of fourteen years as justices of the Supreme Court or judge of the Court of Appeals. In this way, the State secures the services of a body of highly trained judicial officers, at such compensation as the Legislature may fix; and on the other hand, a reasonable provision is made for the continued employment of men whose vigor of body and intellect enables them to perform valuable services in the administration of justice, even although they may have passed the age limit set for their continuance on the bench.

ATTORNEYS

Closely connected with the subject of undue delays in the administration of justice, is the question of qualifications and rules regulating the admission to practice of attorneys and counsellors in the courts of the State. The Legislature has devolved this jurisdiction by law upon the Court of Appeals, and in the judgment of your Committee the Constitution should confirm this power in the court.

STATISTICS

Your Committee has experienced some difficulty in securing comprehensive statistics regarding the judicial business of the State, due to the fact that there is no provision of law requiring courts to prepare and furnish periodically to any public official, or to publish, statistics of the judicial business. A report prepared by the clerks of the Supreme Court in the First Judicial Department for the year 1914, furnishes a model which might well be followed by the courts in other departments, and in order that a uniform rule shall be established respecting this subject, your Committee recommends that the Legislature be authorized to provide for the collection, compilation and publication annually of the civil and criminal judicial statistics of the State.

ORGANIZATION AND JURISDICTION OF COURTS

For the purpose of providing the requisite judicial machinery for the prompt disposal of litigation without delay, your Committee recommends a number of changes in the organization and jurisdiction of the courts, and a slight increase in the number of judges.

The number of justices composing the Appellate Division of the Supreme Court in the First Department, is increased from seven to not less than ten nor more than twelve, and in the Second

Department from five to seven. To supply this enlarged force, provision is made for two new justices in the first judicial district.

The volume of appeals which at present come to the Appellate Division of the Supreme Court in the First Department, amounting during the last year to upwards of 1,500 cases, besides 840 original motions, is far greater than the court as at present constituted can properly continue to dispose of. It is true that until the present time the remarkable body of men now constituting that court has been able to pass upon and decide that number of cases, but they have done so by labors which should not be continuously required by the State of any body of judges, and which in framing the fundamental law of the State should not be assumed as the criterion of the amount of work disposable by any court of seven judges. No other court in the State passes upon much more than one-half the number of cases annually determined by the Appellate Division in the First Department, except the Appellate Division in the Second Department which in 1914 decided about 70 per cent. of that number. The continued increase in importance of the city of New York as a great, if not the greatest commercial center of the world, brings into the courts in the First Department a constantly increasing volume of litigation, involving questions affecting, not merely the citizens of that department but those of the entire State and of almost every other State and Nation. The average number of cases disposed of (not including original motions in the court) by the Appellate Division of the First Department in each of the five years ending 1904 was 1,032; during the five years ending 1914, 1,389. The number of appeals decided in 1904 was 1,053; in 1914 it was 1,534. Your Committee feels great doubt as to whether or not even a court of ten or twelve judges, five of whom are sitting continuously four weeks in every month, can dispose of such a volume of business, and it has therefore provided that the court may, should it find it necessary, sit in two parts, each composed of five justices, both under the direction of one Presiding Justice. It also proposes to authorize the Appellate Division to call in other justices from the Supreme Court for temporary service in case of the illness or absence of one of the regularly assigned justices. The provisions in the present Constitution authorizing the Governor to assign additional justices to an Appellate Division on request, are retained, and the provisions for transferring cases from one division to another by vote of the Presiding Justices in case an Appellate Division is unable to dispose of its business within a reasonable time, are retained and made mandatory.

APPELLATE TERMS

To further relieve the Appellate Divisions in the First and Second Departments, your Committee proposes to increase the number of justices assignable to the Appellate Terms from three to five, and to give to those branches of the court greater effectiveness by making the assignments for periods of one year. All appeals from judgments and orders in civil cases, made by County Courts within those departments, as well as by the City Court of New York, the Municipal Court of the City of New York, the Court of Special Sessions of the City of New York, and all other inferior or local courts, except those held by Justices of the Peace, are required to be heard at the Appellate Term, and the Legislature is empowered to enlarge or modify the jurisdiction of that court and the right of appeal thereto.

Your Committee considered a provision giving to the Appellate Term jurisdiction of appeals from all interlocutory and procedural orders, but decided that it would not be practicable substantially to add to the volume of work now disposed of by this Court. The Appellate Term in the First Department during the year 1914 heard and decided 2,150 appeals from judgments and orders of the Municipal Court of the City of New York and the City Court of New York. The measure recommended by your Committee would give to it also jurisdiction of appeals from the Court of Special Sessions. By allowing the Appellate Division to assign five justices to sit at the Appellate Term, provision is made for relieving undue pressure upon the court. To add further to its jurisdiction, would require the permanent designation of a larger number of justices and interfere with the necessary assignments for the Trial and Special Terms. The judges sitting in the Appellate Term are not prohibited from transacting any other business of the court, and are therefore available for interlocutory applications, but your Committee confidently expects that the result of the operations of the new practice rules, when adopted, will be very greatly to diminish the amount of litigation from purely procedural matters.

COURT OF APPEALS

Perhaps the most troublesome question with which your Committee has had to deal, is the composition and jurisdiction of the Court of Appeals. The Constitution of 1894, by creating the Appellate Divisions as courts of appeal of general jurisdiction, and limiting the Court of Appeals to review of questions of law only, sought to confine the Court of Appeals to the function of settling the law for the entire State in the interests of uniformity

and public justice, as distinguished from the settlement of controversies between individuals merely. The Committee on the Judiciary in that Convention recommended a permanent increase in the number of judges from seven to nine, but that proposed increase was defeated in the Convention. Provision was, however, made for the temporary assignment to that court by the Governor of not more than four Justices of the Supreme Court, and for several years past three justices have been sitting under such designations. Those provisions, it was anticipated, would enable that court to keep abreast of its business. There was at the time of the Convention of 1894 an arrearage of about 175 cases in the Court of Appeals, and it was predicted by some of the delegates in discussing the report of the Judiciary Committee, that this number might be increased to between 300 or 400 by the time the new Judiciary Article became effective, viz.: January 1, 1896. As a matter of fact, there is now an accumulation of more than 600 cases pending in the Court of Appeals, and the average time required between the date of filing return and the cause being reached for argument, unless it is entitled to a preference, is about two years. The Court has made up no calendar since May 4, 1914, and the calendar then made up embraced returns filed to April 20, 1914, only. The number of cases on that calendar was 714. During each of the five years ending 1914 the Court has disposed of on the average 671 cases, and the average number of returns filed has been 769, so that each year adds on the average 100 cases to the number accumulating in the court. Your Committee agrees with the statement of principle made by the Judiciary Committee in its report to the Constitutional Convention of 1894, in the following language:

“Every State is bound to give its citizens one trial of their controversies and one review of the rulings and results of the trial by competent and impartial appellate tribunal. When this is done, the duty of the State, to particular litigants involved in a case is fully performed. There is no consideration either of public duty or private interests involved in litigation which requires a second appeal and a second review.”

Regarding, therefore, the judicial function of the Court of Appeals as that of settling the law for the whole State and maintaining one consistent and harmonious system of justice, your Committee reports provisions: (1) designed to dispose without further delay of the present accumulation of business in that Court, and to enable it in the future to dispose of undue accumulations as they arise; (2) further to limit the jurisdiction of the court so as to prevent the impairment of the line of demarcation between the general appellate courts and the Court of Appeals.

Your Committee, therefore, recommends that the number of permanently elected Judges be increased to ten, and that the three Justices of the Supreme Court at present designated to sit as Associate Judges of the Court of Appeals be continued as such until the expiration of their terms. For the purpose of disposing of the present accumulation of cases, the Court of Appeals is required within three months after the new Constitution takes effect, to designate, for temporary service, not less than four nor more than six Justices of the Supreme Court to sit as Associate Judges of the Court of Appeals, and thereupon to divide the Court into two parts, distributing the permanent and temporary judges equally between such parts, each of which shall have jurisdiction to hear and dispose of the cases on the calendar of the court, which shall be distributed between them by the Chief Judge. When these accumulations are disposed of by reducing the number of cases to 200, *and not later than December 31, 1917*, the Supreme Court Justices are to return to their Court, and the Court of Appeals resumes its normal condition as a single body. Experience in the past having demonstrated that no matter what provision is made to meet the increasing business of the Court of Appeals, there is always danger of undue accumulations resulting in delays of from one to two years in reaching cases for hearing, the Court is further required to make up a calendar at least once in every year, and it is provided that if on the first day of January in any future year, there shall be more than 500 cases pending undisposed of on its calendar, the Court shall again call in the Supreme Court Justices and shall sit in two parts and dispose of such accumulations, and when that is accomplished, *and not more than one year later*, the Justices shall again return to the Supreme Court, and the Court of Appeals resume its normal condition. For the purpose of enabling the Court to retain its maximum strength at all times, provision is further made for calling in Justices of the Supreme Court to take the places of Judges of the Court of Appeals temporarily disqualified by absence or illness, but for periods of not exceeding six months."

Your Committee recognizes the objection to dividing the Court of Appeals under any circumstances into two parts. But unless the Court shall be left to struggle with its constantly increasing accumulation of cases, no alternative to that recommended presents itself, except the creation of a separate Second Division or Commission of Appeals, which in the past has proved unsatisfactory to the profession and the public. The alternative recommended by your Committee appears to it to avoid the objection to such division so far as possible; first, by assuring the temporary character of the division, not only by prescribing that it shall cease

when the number of causes has been reduced to a definite figure, but by fixing the *time* at the expiration of which the temporary designations shall expire, this time being estimated to be somewhat more than should reasonably be required for the two parts to dispose of the accumulation of cases requiring the temporary expansion of the Court; second, by providing that a majority of the judges in each part of the Court shall be composed of members of the permanent court, thus reducing the probability of differences of view resulting in a divergence of opinion to the narrowest bounds of possibility, and third, by giving the Chief Judge control over both parts of the Court with power himself to sit in either of them.

Your Committee recommends the following modification in the general prohibition against the Court of Appeals reviewing facts in any case, viz.:

Under the provisions of section 1317 of the Code of Civil Procedure, the Appellate Division on reversing or modifying a judgment is empowered to make new findings of fact and render judgment thereon. In such cases, the Appellate Division in effect acts as an original trial court, and unless a review is allowed in the Court of Appeals, the litigant is deprived of the right, conceded to all other litigants, of at least one full review upon appeal from the judgment of the trial court. With this exception, the present limitation of the jurisdiction of the Court of Appeals to questions of law only is retained.

The class of appeals which may be taken as a matter of right is also restricted and limited to the following cases only:

(1) Where the judgment is of death;

(2) From a judgment or order entered upon a decision of the Appellate Division which finally determines an action or a special proceeding directly involving the construction of the Constitution of the State or of the United States, or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the trial court is reversed or modified;

(3) From an order granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him.

The Court of Appeals is, however, empowered itself to allow an appeal in any case where a question of law is involved which in its opinion ought to be reviewed by it; but the power now vested in the Appellate Division allowing such appeals is taken away.

Your Committee recommends one further modification in the jurisdiction of the court. Previous to 1894, the question whether or not there was any evidence to support a finding of fact or a verdict was regarded as one of law, but in the Constitution of 1894

there was inserted in Article VI, section 9, a provision that "no unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to support a finding of fact or a verdict not directed by the court shall be reviewed by the Court of Appeals." The testimony of almost all of the judges who appeared before your Committee is to the effect that the practical operations of that provision have resulted unsatisfactorily; the New York State Bar Association, the New York Association of the Bar, the New York County Lawyers Association, and others, have united in the recommendation that this limitation be stricken from the Constitution, and your Committee has, therefore, so reported. Briefly, it may be stated, as is done by the Special Committee of the Association of the Bar of the City of New York, that "this provision has frequently operated to preclude the review of what is essentially a question of law, and it has applied unjustly to many cases quite beyond the scope contemplated by its framers."

SURROGATES

In 1913, the Legislature enacted a recodification of the law regulating the jurisdiction and practice of Surrogates and Surrogates' Courts, which vested them with much greater jurisdiction over the administration of the estates of decedents than theretofore had been enjoyed by them, including jurisdiction, in their discretion, in any proceeding in which a controverted question of fact arises of which any party has a constitutional right of trial by jury, and in any proceeding for the probate of a will, in which a controverted question of fact may arise, either to conduct the trial by jury in the Surrogate's Court, or to refer the same to the Supreme Court to be tried at a trial term held within the county or in the County Court of the county. With some hesitation, your Committee has reached the conclusion to continue the present jurisdiction of the Surrogates as so modified until otherwise provided by law. This will leave the whole subject within the discretion of the Legislature, and if experience shall demonstrate the need of some modification of the jurisdiction, the Legislature may act accordingly.

COUNTY COURTS

The jurisdiction of the County Courts in actions at common law for the recovery of money is increased from \$2,000 to \$3,000, and they are also given jurisdiction over actions against non-residents having an office for the regular transaction of business within the county, upon causes of action arising within the county.

The existing Constitution prohibits a County Judge or Surrogate in a county having a population exceeding 120,000 from practicing as attorney or counselor-at-law or acting as referee. Much criticism has arisen respecting the effect of permitting County Judges and Surrogates in other counties to practice law. The opposition to making a general prohibition of the practice results from the unwillingness or inability of the counties to sanction legislative increase in the salaries of these officials to an amount which would compensate competent judges. After careful consideration, your Committee recommends an extension of the prohibition so as to apply to all counties having a population of 75,000 or upwards. This will result in extending it to thirteen additional counties, all of them prosperous and apparently abundantly able to adequately compensate such officials for the loss of opportunity to add to their salaries by private practice. In order, however, to make it possible to secure competent men for those positions, in view of this action, the Legislature is to be further empowered at any time to consolidate the offices of County Judge and Surrogate in any county. The compensation of the County Judges is to be directly fixed by the Boards of Supervisors of the counties, or other officials exercising powers similar to those now vested in such boards, instead of through the Legislature as at present, and except in case of such consolidation, it is provided that the compensation of a judge or justice of any court in the State, shall be neither increased nor decreased during the term of office for which he was elected or appointed.

COMMISSIONERS OF JURORS

In conformity with the recommendation of a number of judges who have appeared before it, your Committee reports a provision for the appointment of Commissioners of Jurors in all counties having a population of upwards of 75,000 inhabitants, to be chosen by the Justices of the Supreme Court, their terms of office and compensation to be fixed by the Legislature, which shall also prescribe and define their duties.

IMPEACHMENT

One of the arguments employed by advocates of the recall of judges has been that the proceeding to remove judges by impeachment was so cumbersome as to be impracticable, and not to afford a feasible remedy for the removal of an unfit judge, save in extraordinary cases of political significance. For the purpose of removing this argument and, without in the slightest degree detracting from the dignity and importance of trial by impeach-

ment, but to make it conform with the reasonable requirements of practical judicial procedure, your Committee recommends a provision authorizing the Court for the Trial of Impeachments to order all or any part of the testimony to be taken and reported by a committee composed of members of the court, reserving, however, to the impeached officer the right to testify before the court, if he so desire.

COURT OF CLAIMS

To end the recurrent scandals resulting from the Legislature dealing with the Court of Claims as a mere political football, your Committee has provided for the continuance of this court as a constitutional court. Two courses only appear to be open in dealing with this matter. One, to transfer to the Supreme Court the jurisdiction now exercised by the present Court of Claims, the other, to provide in the Constitution for the continuance of that tribunal as a court. The Court of Claims is the development of the Legislative Committee or Statutory Board of Audit. Its jurisdiction is essentially different from that of ordinary courts of justice. It should have power to exercise this jurisdiction in a simple summary manner, without being hampered by technical rules of law, and your Committee, therefore, recommends that it be continued as at present constituted, with power in the Legislature to increase its members, the judges to have authority separately to take testimony in any case, but a majority of the court to concur in any award.

CONSOLIDATION OF LOCAL COURTS

Very greatly increased efficiency has been realized by the consolidation of numerous small courts into single tribunals, so organized that their entire judicial force may be kept occupied, and the business within the jurisdiction of the court fairly distributed among its various terms and parts. Numerous and different plans of consolidation have been advocated before your Committee, some even going to the length of urging the absorption of all the courts of the State into one great tribunal, having original and appellate jurisdiction. Without yielding to such extreme suggestions as these, your Committee has realized the force of the criticism of the unsatisfactory organization of the courts of civil and criminal jurisdiction in the city of New York, intermediate the Supreme Court and the courts of inferior civil and criminal jurisdiction. These latter courts recently have been reorganized, so that the court of limited civil jurisdiction, the Municipal Court is vested with jurisdiction throughout the Greater City, holding terms in each of the five boroughs, its judges, under the direction of its presiding judge, being authorized to sit wherever the business of the court requires, and that business being distributed as

the requirements of its due and prompt determination may demand. The Court of Special Sessions, and the Magistrates' Courts in the city of New York, in like manner have been reorganized with jurisdiction throughout the greater city, and with provisions for the conduct of its business similar to those applicable to the Municipal Court. The Association of the Bar of the city of New York has recommended that the Legislature be empowered to abolish County Courts within the city of New York and to extend over the whole city, the jurisdiction of the Court of General Sessions in and for the city and county of New York, so far as regards criminal jurisdiction, and the jurisdiction of the City Court of the city of New York, so far as regards civil jurisdiction. In its opinion, such consolidated courts would relieve the Supreme Court of a great number of small cases, and would make homogeneous courts of civil and criminal jurisdiction, respectively, which would better meet the requirements of the business in the city of New York than the existing separate courts. Similar consolidations have been made with very satisfactory results in other cities. In conformity with those recommendations, your Committee reports the following provisions:

From and after January 1, 1917, the jurisdiction of the Court of General Sessions of the city of New York is extended throughout the greater city. The County Courts of Kings, Queens, Richmond and Bronx are abolished, and their jurisdiction transferred to the Court of General Sessions, the judges of such County Courts becoming judges of the Court of General Sessions, the successors of the judges so transferred to be elected by the electors of the counties in which they respectively reside. Owing to the rapid growth of population in Bronx county, the Legislature is empowered to provide one additional judge from that county if it shall deem it proper so to do. One of the principal difficulties in accomplishing this consolidation lies in the difference in the salaries paid to the judges. Those of the Court of General Sessions at present receive salaries of \$17,500 per annum, the County Court judges in Kings, Queens and Bronx each \$10,000 per annum and in Richmond \$7,500 per annum. Your Committee has provided that the present incumbents shall continue to receive those salaries until the expiration of their respective terms, but that their successors, who shall be elected for periods of fourteen years, shall be paid a salary to be fixed by the Legislature.

From and after January 1, 1917, the jurisdiction of the City Court of New York is extended throughout the greater city, and the pecuniary limit for which it may entertain actions for the recovery of money increased to \$5,000. Provision is made for electing additional judges of the court, two from the county of Kings, and one from each of the counties of Bronx and Queens.

The Legislature is empowered to provide one additional judge from Kings county should it deem proper so to do. The amount of civil business in the County Court of Richmond does not seem sufficient to require provision to be made for a judge of the City Court from that county, but provision is made for a separate surrogate therein.

CHILDREN'S COURTS

[To enable the Legislature to keep pace with modern theories of dealing with delinquent children, not as criminals, but as wards of the State, and of regulating domestic relations on a broader basis than the mere enforcement of penal laws, your Committee has reported a provision empowering the Legislature to establish inferior or local courts with territorial jurisdiction throughout the counties in which they are situated, and to confer upon them, or upon existing courts, power to try without a jury offenses of the grade of misdemeanor, and to establish children's courts and courts of domestic relations, with jurisdiction found to be essential for the successful administration of such courts.]

JURY EXEMPTIONS

Exemptions from liability to jury service have been granted by the Legislature from time to time to various classes of citizens. It is difficult to imagine any sound reason for the existence of some of these exemptions. Many judges who have appeared before your Committee have attributed to these exemptions difficulties experienced in securing in important cases juries of sufficient intelligence to comprehend the issues involved. Your Committee is inclined to the opinion that except in the case of physicians and surgeons in active practice, exemptions from liability to jury duty should be limited to persons employed in the public service; but recognizing the difficulty of fairly determining this question within the limitations necessarily imposed upon it, your Committee has recommended that no others be exempt unless and except the judges empowered to make the Civil Practice rules shall so provide. It is believed that this body, charged with formulating the rules governing procedure in the Courts, will be better qualified to determine what classes of persons may be exempted from jury duty without impairment to the administration of justice. Soldiers and sailors of the United States army or navy, members of the National Guard and volunteer firemen now serving as such or heretofore honorably discharged are excepted from this prohibition.

TORRENS LAW

The Committee has also recommended a provision authorizing the enactment of laws to provide for a system of judicial authentication and guaranty by the State or by any county of titles to real

property, the determination of adverse claims to and interests therein and the establishment by means of fees or otherwise of protective funds to make such system operative, and to confer upon existing courts of record such administrative powers as are necessary in carrying out such system. The advocates of the so-called Torrens Law system have pressed upon your Committee recommendations for the establishment of separate land courts or land divisions in the Supreme Court and provisions authorizing the Legislature to confer upon administrative officers judicial powers in carrying out this system. Your Committee has felt, however, that no separate Land Division or Land Court was either necessary or desirable, and it is of the opinion that it is inexpedient to confer judicial powers upon administrative officers.

Your Committee has adopted and included in the article reported portions of the proposed constitutional amendments introduced by the following named delegates: Messrs. Clearwater, Steinbrink, Aiken, Rodenbeck, Baldwin, R. B. Smith, Cobb, Mandeville, Reeves, C. H. Young, Tuck, Sheehan, Fobes, Rosch, Lincoln, Heaton, McKean, Leggett, Ostrander, Coles, Breuner, Barrett, Dunmore, Angell, Wiggins, Green, Stimson.

Your Committee gratefully acknowledges the valuable suggestions, explanations and information received from the gentlemen who introduced these amendments as well as from other proposals which furnished helpful suggestions.

GEORGE W. WICKERSHAM,

Chairman.

Mr. Wickersham — Mr. President, may the amendment be read as offered?

The President — The amendment will be read.

Mr. Dunmore — I have the greatest respect for my associates on the Judiciary Committee and for their opinion, but there is one thing in regard to which I am compelled to dissent from the majority report, and I desire to file a minority report.

The President — Mr. Dunmore files a minority report. The Secretary will read the proposal reported from the Committee.

The Secretary — Mr. Wickersham to which was referred a number of proposed amendments relating to Article VI of the Constitution reports a proposed amendment entitled Proposed Constitutional Amendment to amend Article VI of the Constitution generally. Second reading. To amend Article VI of the Constitution generally.

The President — Are there any special motions to be made with reference to this proposed amendment? Referred to the Committee of the Whole. Are there any further reports of standing committees? Reports of special committees. Third reading. Unfinished business in general orders. Special orders. The Convention

will go into Committee of the Whole for consideration of the special order of the day, a proposed amendment reported by the Committee on Cities. General Order No. 50. Will Mr. Austin take the Chair?

(Mr. Austin takes the Chair.)

Mr. Austin — The Convention is now in general orders in Committee of the Whole on General Order No. 50.

Mr. Low — Mr. Chairman, in rising to move the acceptance of the home rule amendment proposed by the Committee on Cities and to explain the amendment, I venture to ask that I may be permitted to finish my statement without interruption. After that is finished, I shall be glad to answer any question that may be asked of me to the best of my ability. General Order No. 50, I may state for the convenience of the members is No. 781, the report of the Committee on Cities, to amend Article 12 of the Constitution, generally, in relation to cities and villages and their powers of self-government. I shall not detain the Convention by any oratory on the subject of home rule as an abstract proposition, either as to its importance to the cities or as to its advantages to the State. As an abstract proposition, I think that it is probable that every member of this Convention is in favor of it. The differences begin when we begin to consider the details of the specific bill or amendment to provide for home rule by cities. I want therefore to try to focus, as briefly as possible, the attention of the Convention upon the specific problem with which this amendment tries to deal. I wonder if any here realize that in forty-five years we have made no substantial progress in relieving the Legislature of the necessity of dealing with local matters or in granting to the cities more control of their local affairs. I think these very few figures will be interesting and instructive. The Evarts Committee on City Government which reported in 1877 noted that in the year 1870, 808 acts were passed by the Legislature. Of that number there were 212 relating to cities and villages, 94 to cities alone, and 36 to New York city, and an even larger number, the report states, to the then city of Brooklyn. In 1915 the Legislature passed 729 bills. Of that number 222 acts related to cities and villages, 182 acts related to cities and 76 acts related to New York city. Those are the figures that I have received from the Law Library. The figures compiled by the Citizens' Union differ a little but the details are unimportant. What I want to fix in the mind of the Convention is that, so far as the Constitution is concerned, it is just as necessary to-day as it was in 1870 for the cities to come to the Legislature for all sorts of minute and special legislation.

The Constitutional Convention of 1894, however, did make one provision which has resulted in a very great reform. It provided

that special city bills, as defined in the Constitution, should be submitted to the cities with the authority either in the mayor or in the mayor and common council, according to the size of the cities, to accept or to refuse to accept proposed bills. That system is perfectly understood and is usually described as the suspensive or the suspensory veto of the localities. The Convention will be interested to know how that provision has worked. From 1895, when the present Constitution went into force, up to 1915, the present year, only 142 vetoes, local vetoes, were overridden by the Legislature; that is to say, in twenty-one years vetoes were overridden at the average rate of seven a year. During the period from 1902 to 1914, 524 local vetoes were not overridden. And what is most important of all is, that during the last six years only eleven such vetoes have been overridden by the Legislature, or less than two a year. When one considers that there were prior to this year fifty-four cities in the State, and that as concerns the entire fifty-four only two such vetoes were overridden, the remarkable effectiveness of that provision in preventing unwelcome legislation is very clear. It is not that problem, however, with which we are now called upon to deal. We are called upon to deal with the other side of it which was not successfully dealt with in 1894. We want to relieve the Legislature of the necessity of passing all these local laws. We want to give the cities as nearly complete control of their own affairs as good judgment will permit. It seems to me, Mr. Chairman, that any measure which is to accomplish the desired results must do four things: It must grant to the cities adequate power to manage their own affairs; second, it must give to the local authorities for the time being the right to adjust the local machinery of the city, so that it can meet new emergencies and new duties successfully; third, it must prevent the Legislature from interfering out of hand in the city's affairs; and, fourth, it must leave power enough somewhere, either in the city or in the Legislature, to deal adequately with every question. Now, Mr. Chairman, it is not necessary for me in a Convention so largely made up of lawyers to attempt to unfold the legal difficulties of the problem. There are, besides the lawyers, at least four ex-mayors in the Convention, who know something about this problem by experience; but for the benefit of the other members who may be entirely unfamiliar with it, I do want to read a few quotations from Professor Goodnow's book on home rule. In the absence of my notes, I think I can state the question sufficiently clearly even for the benefit of those who are not lawyers. A city is not a little State which can by forming a charter take to itself whatever power it pleases. That, I think, is quite evident. Neither is a city like a State of the Union which has by right all

the powers that it has not given up. Neither is a city in its relation to the State that of a province to the Dominion of Canada. A province in Canada has the powers that are given to it, as a city has in the United States, and the Dominion government has everything else, but the Dominion government exercises the powers of the State through its own agencies. It does not use the province at all for the purpose of carrying out State policies. That is the respect in which the relation between the State of New York and the cities of New York is different from that between the provinces and the central government of Canada. The State of New York does use its cities in very many particulars as the agents of the State to administer the policies of the State as to those matters in which the State is concerned; and it is precisely in that fact that the difficulty of the problem is particularly found. If it were possible to say these are city affairs, and those are State affairs, and make a sharp line between them, the problem would be very easy to solve. But I think so eminent an authority as Judge Cooley, and I think also Judge Dillon, unless I am misinformed, have stated that it is impossible to do that; and therefore we are bound to consider in any home rule amendment not only the things that the city is interested in by itself, not only the things that the State is interested in by itself, but also the things in which their interest is mutual, and that is precisely the thing that makes our problem serious and difficult.

The Convention of 1894 attempted to deal with this problem by dividing the laws of the State into general laws and special city laws, and it provided that special city laws should be submitted to the locality in the way in which I have described. But the courts of the State ruled that a general law might be a law, for example, in this form, that it would apply to cities of only 1,000,000 inhabitants or of 1,000,000 and over; the theory being that while at the time the law might apply only to the city of New York, in time some other city might have a million people and then the law would apply to the other city as well as to New York. In other words, the hope of escaping legislation affecting one city only through the requirement for general laws has been disappointed in this State as it has been disappointed in every State of the Union that I can now recall, except possibly in Illinois where the courts have given to the phrase "general law" what to the layman is its ordinary significance. The courts of New Jersey also have held that where classification is proposed by any law, classification must relate to the subject-matter of the law. It cannot be determined by something foreign to that. New York is not the only State which has been obliged by the necessities of the case to give that sort of an interpretation to a general law.

Pennsylvania has an even broader mandate, I think, against special legislation for cities, than New York has; and yet the courts of Pennsylvania were obliged to sustain a law so drawn that it applied only to Philadelphia, for the establishment, as I recall, of a quarantine; the court saying that they must consider that a general law, otherwise every inland city that did not need a quarantine must establish one in order that Philadelphia, which did need it, could have one. I think, therefore, that it is quite apparent that this problem of ours cannot be solved simply by providing for general laws only in relation to cities. Therefore that is what I might call the legal basis of the demand from cities for home rule. They find themselves caught in this net with many meshes, and they cannot escape, and the object of the Proposed Amendment is to try to provide a way out. Of course, the request that has come to this Convention from the Conference of Mayors, shows more than that. It shows not only how sensitive the cities have become on this subject but it also shows, I am glad to believe, a very marked and encouraging increase in local sentiment and of public spirit within the cities from which, as the years go on, everything is to be hoped. Now, that, I am sure, is sufficient for me to say on the legal difficulties of the proposition. Let me try to point out the practical difficulties of the problem as it exists in the State of New York.

We have fifty-six cities in the State at present. At one end of the line is the city of New York, with a population of over five millions, perhaps more than half of the population of the State, and at the other end of the line are the third class cities, with a population of a few thousand; and this Convention is called upon to pass an amendment which will deal justly and fairly and adequately with cities representing so great a range of population, of material interest, and of physical location. The city of New York received its first charter from Peter Stuyvesant, when it was called New Amsterdam in 1653. The other day, in celebrating the adoption of a city flag, the city celebrated the 250th anniversary of the receipt of its first charter from an English king. A few years later, in 1684, the famous Dongan charter was granted to the city by Governor Dongan. From that day to this, Mr. Chairman, although the charter of the city of New York has been often revised, no revisers have ever been willing to repeal everything that went before. The result is that there are in that Greater New York charter to-day parts of the Dongan charter of 1684; there are parts of the Montgomery charter of 1730; and there are parts of every other revision that has taken place between that day and this. The result is not only that the charter of New York is a very bulky document, but it is estimated that approximately ten thousand laws affect the administration of the city of

New York and its powers, surrounding the charter; so that in the case of the city of New York we are not dealing with a charter that has been made out of hand, like the charter of Saratoga Springs the other day, and the charter of White Plains, but we are dealing with a charter that is the growth of two hundred and fifty years, and I venture to think that the gentlemen of this Convention will feel as I do, that it is a tremendously serious proposition to suggest that a charter which is a growth like that should be torn up by the roots and the city compelled to start over again. It was my good fortune to aid in drafting the Greater New York charter which was enacted in order to provide for the consolidation into the then city of New York of Brooklyn and of the other municipalities that were at that time made part of New York city. The President of that Commission was General Tracy. On it was Judge Dillon, William C. DeWitt, for many years corporation counsel of the city of Brooklyn. Then, if ever, was the time in which to provide an entirely new charter for the city of New York; but that commission, like its predecessors, declined to undertake that great responsibility. Possibly something of that decision was due to pressure of time, but we were restrained, sir, by the recognition of the fact that we were dealing with a growth, not with a document that was given out of hand by the Legislature. To illustrate the significance of the situation, let me call the attention of the Convention to the fact that when the corporation counsel of New York city was asked to prepare an amendment to the charter which would permit the city to establish a central purchasing bureau, it was necessary to provide for the repeal or the modification of one hundred different laws — approximately, if not exactly. Another feature of the situation is that in the charter itself and in many of these surrounding laws, the operations of the city are controlled in the most minute way. It became necessary a few years ago to come to the Legislature for a charter amendment permitting the city authorities to assign rooms in the Hall of Records, just because some officer who wanted to have a particular room had succeeded in having that put into the law. I will not weary the Convention as I might by further illustration. The one point that I want to make is that the charter of New York city, this growth of two hundred and fifty years, is full of those embarrassing and harassing details and that is why I undertake to say, Mr. Chairman, that in providing home rule for the city of New York we have this problem: We must give to the government of the day in that city, without any regard to charter amendment or charter revision in any other form, authority to modify the city charter in all necessary respects if we wish to enable the city to attend to its own affairs.

With this general explanation, this general development of the

precise, practical problem by which we are confronted, let me ask your attention now to the report of the Committee itself. I will take up the explanation first of section 4, which is to be found on page 4 of the pending amendment. I do that because what is new and what deals primarily with the home rule problem is contained in section 4. The amendments that preceded it are in some instances very important, but they are all related to this matter, and therefore I wish to begin the consideration of this amendment with the study of section 4. That begins: "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs, subject to the Constitution and to the general laws of the State applying to all the inhabitants, or applying to all the cities or counties of the State without classification or distinction." What follows, paragraphs a and b, adds nothing to that grant and takes nothing from it; so that I ask you, to consider, first of all, that this amendment provides an exclusive grant of power to the city to manage, regulate and control its own property, business and local affairs. In the amendments which have been suggested to the Committee, that proposition is contained in different forms; but that form is intended to express, and the Committee thinks that it does express, an adequate, exclusive grant of power to the city to manage its own local affairs. Now, it is claimed by some of those who have criticized this bill that by an amendment which we propose in section 3, which is to be found on page 3 of the bill submitted by the Committee on Cities, that grant is either taken back or vitally limited. The amendment to which I refer is this: which is a redrafting of section 2 of the present Constitution and which embodies this paragraph as it reads in the present Constitution: "Laws relating to the property, affairs or government of cities, and the general several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class." Those words are omitted from the pending amendment and for them is substituted this passage: "Laws relating to the government of cities and applying to less than all the cities of the State without classification or distinction and not within the powers granted to cities by this article are defined for the purposes of this section as special city laws."

The remainder of Section 12 provides for the suspensory veto. Now, the Convention will notice that two changes have been made there which bear very vitally upon the proposed grant of power. We have left out of the present Constitution the authority to the Legislature to pass special city laws, relating to either the property or the affairs of cities and have left in the authority to

pass such laws in this form: "Laws relating to the government of cities and applying to less than all the cities of the State without classification or distinction and not within the powers granted to cities by this article are defined for the purpose of this section as special city laws."

Mr. Low — I hope I may answer the gentleman's question without hearing it, before I finish; if not, I shall be glad to answer it when I have concluded. Now, it is objected, first of all, that no authority whatever should be left with the Legislature to pass special city laws, even as to the matters in which, by common consent, the State is interested. Now, Mr. Chairman, the Cities Committee inserted that provision deliberately, because the Committee believes, if I understand its attitude correctly, that without that provision it may not be possible through general laws to deal successfully with the tremendously varying problems that arise in the city of New York, for example, and in a small city of the third class. That apprehension is not based on theory. *A priori*, I think one would say that it would be very difficult to do that; and, *a priori*, I think one would be very much inclined to say that it is not statesmanlike to attempt to deal with things so very different under the same law, but we have illustrations of the impossibility of doing that in the Constitution itself. The Constitution as it exists to-day has to make special provisions in section 10 of Article VIII relating to the debt limit of cities for the benefit of the city of New York; and in the amendment which is pending from the Cities Committee dealing with the financial control of cities, proposing to adopt the State system of serial bonds as far as it is possible to do so in cities, we have to make again a special exception for the benefit of the city of New York, because the city of New York is under contract on its dual subway for the construction of that subway under a sinking fund provision that cannot be changed. Now, gentlemen, if in two instances it is found impossible in the Constitution of the State itself to deal with New York by common provisions that apply to all the other cities, is it reasonable to believe that all of the problems that will arise in the surging life of the city communities in this State can be dealt with wisely unless there is power in the Legislature to pass special city laws? But in this connection I would like to point out to the Convention that these special city laws cannot have anything to do with the city's local affairs or its property. And they must be enacted, if at all, subject to the suspensory veto of the locality, and I have just shown the Convention that while the Legislature has had the authority to pass a very much larger range of special city laws than that, in six years

only eleven such laws have gone into effect without the acceptance of the city.

I submit, therefore, that under the suspensory veto, it is practical to leave with the Legislature the power to pass special city laws without interfering in any substantial way, practically, with the local control of the city, not only of its affairs, not only of its property, but of its local government. Now, the second objection made to that proposed amendment is that the city acts for the State in so many different ways that when the State is authorized to pass special laws in regard to the government of cities there is some fear that the grant of exclusive powers to cities which is contained in the first paragraph of section 4 which I read, may be reduced to so small a field, that it will be ineffective. I think that that claim and that fear are not well founded. If the Committee will read the so-called home rule law, chapter 247 of the Laws of 1913, they will find in Section 20 a grant of specific powers made by the Legislature to all the cities of the State, in which those powers are enumerated in twenty-three different articles. Nobody can read that law without seeing that the cities under this amendment will control an immense range of their own activities as to which it will not be necessary for them to come to the Legislature at all, unless, as is the case in the city of New York, unfortunately, so many of the little details involved in the operations of the cities are provided for in the charter, so that the charter has to be amended. It is interesting to point out that this home rule law of 1913 has been largely ineffective for two reasons. First, because of a doubt whether the Legislature had the capacity, the legal capacity, to devolve upon the cities so much local power of legislation. I submit that with the grant contained in Section 4 of this amendment, if that were to become a part of the Constitution of the State, any weaknesses found in this law of 1913 from that cause would certainly be avoided. This law has failed for one other reason. The cities generally are not so organized that by their charters they can do the things that they were given the power to do under this law. Whenever the case would come into the courts, the courts have held that the cities are bound to use,—

The Chairman — Will the Sergeant-at-Arms see that the plumbing operations in the Northeast corner of the Chamber are discontinued until recess.

Mr. Low — The courts have held, I think, universally, that the cities are constrained by their existing charters to use the machinery that they have.

That, Mr. Chairman, is the reason that I said a little while ago, that any home rule provision that is to be effective and that

is to give real relief, and to give it quickly, must empower the authorities of to-day to unlock that door. New York city, especially, and the other cities measurably, all alike, are tied down by little withes and small requirements that might just as well be swept aside as not, ought to be swept aside entirely, and yet they are there, and the cities, without some charter amendment, are powerless to relieve themselves of those embarrassments. I think it is clear that the provision contained on page 3, permitting the State to pass special laws relating to the government of cities that are not within the powers granted to the cities by this article, still leaves the cities an undiminished control of everything that relates to their property and local affairs, and so much of their government as is not affected by the joint interests of the State and the city in the government of the city. Now, with the permission of the Convention, I will return to a more careful study of the wording of Section 4. I hope I have made it clear that there is a very distinct and a very broad grant of power to the cities which is not taken back and diminished by any other amendment contained in this Section 4.

Let me then call your attention to the last clause of that grant: "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs, subject to the Constitution and to the general laws of the State applying to all the inhabitants, or applying to all the cities or counties of the State without classification or distinction." Subject to the Constitution and to the general laws of the State applying to all the inhabitants or applying to all the cities and counties of the State without classification or distinction. I have already pointed out that the phrase "general law", by itself, would give very little relief because a general law might be so drawn as to apply to the city of New York alone. Now, why do we say the general laws of the State applying to all the inhabitants, or applying to all of the cities or counties of the State without classification or distinction? Perhaps I can make that point most clear by referring to the suggestion contained in the Mayor's amendment which read that, subject to the Constitution and to the general laws of the State applying in terms and in effect to the entire State, the cities were given the grant contained in that bill. I pointed out in my introductory remarks that one of the characteristics of any measure that is to succeed in the circumstances of New York State's cities must be to leave power enough somewhere either in the cities or the State to deal with either problem. Now, the Mayor's amendment, while that gave the cities powers over salaries, very broadly, not only over the city salaries but over all salaries paid directly or indirectly out of the treasury of the city,

it specifically exempts the salaries of the courts of record. It is a curious circumstance that among the laws passed this year relating to the city of New York are two providing that the salaries of two justices of the Supreme Court who had died during the year might be paid to their widows. I suppose that without that law that could not have been done. Now, while it may be possible to pass a law affecting the whole State, that the salaries of justices of courts of record dying should be paid to their widows (they might not have any widows), at any rate in this particular case it had to be dealt with by special law. The proposed law went in this case to the city and it theoretically would go to the city under this amendment for its approval. But there is a matter as to which the State must act, and ought to act, as the law now stands, and unless it could have passed these special laws, great injustice would have been done. I want to point out to you that while theoretically it is entirely possible to get general laws passed on questions like that, it cannot be done quickly. It takes time. And if there is difference of opinion between the cities it might be difficult to get such a law at all, so I return to my proposition that there must be somewhere if not in the city, in the State, the power and authority to deal with actual problems that every-day life brings.

In order to avoid the stringent limitation which the Mayor's Conference proposed on State action, that it could pass no law at all which did not apply to city and country alike which would be binding on a city, the Cities Committee had used this phrase that the Cities' exclusive power is subject to the general laws of the State, applying to all the inhabitants or applying to all the cities and counties of the State without classification or distinction. Every one, I think it may fairly be said, admits that the State should have the power to establish general policies for all the cities of the State, where such policies are needed and as to that I think it is only a difference of choice between the terms of expression. Our qualification is somewhat larger than that of most of the suggestions. Whether you say a law can be passed applying to all of the cities in terms and in effect in the same way, or whether you say it shall apply to all of the cities without classification or distinction seems to me to be a choice between terms and not to involve a question of principle.

I hope I have already said enough to show the Convention that no grant of power less than the amendment gives will adequately meet the situation. Such a grant, theoretically, could be given through the Legislature but it would have to be just as great a grant as this, and therefore it seems to the Committee in every way better that the grant should be made directly through the Constitution to the city, and therefore be beyond the reach of being

either recalled by the Legislature or being nibbled away by the Legislature. Let me ask your attention to the next subject. The amendment goes on to say "Such power shall be deemed to include among others: The powers and definition of the powers that are granted — it simply is for purposes which I shall allude to later. Such power shall be deemed to include among others: (a) the power to organize and manage all departments, bureaus, or other divisions of the city government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees, and of all police and health officers and employees, and of all non-judicial officers and employees attached to courts not of record, and to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city, except assistants and employees of district attorney and except officers and employees of courts of record." We resorted to the use of paragraph (a) for two purposes; first to make it perfectly clear that the whole question of city management and city organization is a local matter and not a matter of State concern; and, second, in order that by this means we might permit the cities, through the government of the day, to initiate amendments to charters and then to amend their charters at home without any necessity of coming to the Legislature at all. We have inserted in addition, to city officers and employees, police and health officers and employees. I have seen one criticism to the effect that if we had said nothing about the police and health employees, it would have been taken for granted that they were city officers; but that now, a doubt has been raised. Mr. Chairman, I have read in Professor Goodnow's book a decision of a Massachusetts court, which says that policemen are not city officers at all, that they are State officers acting for the State in the city and through the city, for the public convenience. I think if we had not used that clause there would have been very grave doubt whether our grant of power to the cities would have enabled them to control the organization of the police and health departments within those cities.

The Convention will notice we have said nothing about Education. We may have to. It depends upon the action of the convention on the proposals that have been submitted by the Committee on Education. The Convention has already adopted an amendment declaring that education is a State function. If it goes on and adopts the second amendment that is pending, it is very clear the Department of Education, as a separate body politic, will practically be taken out of local control except as the locality may appoint the members of the board and perhaps determine on the size of the board and elect its members as the general laws of

the State may provide. If that amendment should not be adopted it is possible that some reference may have to be made to the Department of Education in this paragraph "a" in order to make its relationship clear. When this paragraph was first drawn, it included the same powers of organizing and managing and regulating the offices of the five counties that are wholly included within the city of New York and as are given in regard to city departments. Later it was pointed out that the sheriff of each county is sued every day, and that therefore it was a very unfair proposition to put the control of the sheriff's office in the hands of the city government to the extent that the first lines of this paragraph would have done. It was also pointed out that the register and the county clerk, while not sued so frequently, are subject to suit and are, as a matter of fact, occasionally sued so that the same argument prevailed as to them. And, therefore, with a good deal of regret, the Cities Committee amended that article so as to give to a city, as to counties within the city only the power to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city, except assistants and employees of district attorneys and except officers and employees of courts of record. Now, why were those exceptions made? In one county of the State, Mr. Chairman, a little while ago, the district attorney proposed to sue the supervisors, to indict the supervisors. The supervisors immediately increased his salary. That was not New York county, it was another part of the State — and the consequence was — I say the consequences — perhaps I am not justified in saying that, but the fact was that the proposed indictments were never found. If the Convention will reflect for a moment, however, I think that they will see that the exceptions rest upon sound principle. It is a fact that the district attorney is the only officer who may be called upon to indict either borough officials in the city of New York or city officials in any city of the State, and I think that it is good judgment, sound sense, to make that office independent, financially, of the financial officers of the city whom he may be called upon to indict. The reason why the officers and employees of courts of record are excepted is equally apparent. They are part of the administration of justice in the city, and it seems to be natural to leave the control of their salaries with the State. Paragraph *b* of the same section reads as follows: "The power as hereinbefore provided, is subject to be included in this grant, to amend its charter or any local or special law relating to its property, business or local affairs." That was so expressed in order to make it perfectly clear that that power was granted to the city.

Now the next paragraph opens up a new set of questions. "At the general election in the year one thousand nine hundred and sixteen, and in every eighth year thereafter, the question. 'Shall there be a commission to revise the charter of the city?' shall be submitted to the electors of each city. If, in any city, a majority of the votes cast upon such question be in the affirmative, there shall be chosen by the electors of such city, at the general election in the next following year, or at a special election called for that purpose, seven commissioners, who shall proceed to revise the city charter, provided, however, that in the city of New York the number of such commissioners shall be sixteen, nine of whom shall be chosen by the electors of the entire city, two by the electors of the borough of Manhattan, two by the electors of the borough of Brooklyn, and one each by the electors of the boroughs of the Bronx, Queens and Richmond, respectively. Such revision shall be submitted to the electors of the city at the next ensuing general election or at a special election to be called for that purpose. If such revision be approved by the affirmative vote of the majority of the electors voting thereon, such revision shall be laid before the Legislature during the first week of its session in January of the year following the approval thereof, and, if not disapproved by the Legislature by joint resolution within sixty days thereafter, shall thereupon take effect as law except as therein otherwise specified." It is a peculiarity of this problem, Mr. Chairman, that the Committee has to turn first in one direction to defend it and then in another and it certainly will be asked, why is the city to vote as to whether it wants a new charter or not; and why, if it votes that it does, is the city allowed to prepare and vote upon its own charter? Let me answer the last question first. There is a school of opinion in this Convention, I know very well, that believes that cities should receive their charters from the Legislature as they always have done, and who are startled at the suggestion that the city should prepare its own charter and vote for it. Now, gentlemen, let me give you a little of the charter history of New York city in recent years. Senator Elsberg appeared before the Cities Committee and made this very interesting statement: He said that when the charter revision of 1901 reached the Legislature, it came up as a charter giving to the mayor and all other city officials a four-year term. The Legislature had intended to pass it in that form, but in the last hours of the session it was determined to reduce the term to two years. There was so little time left that the charter was cut up into pieces and passed around among twenty or thirty members of the Legislature, with instructions to reduce the word "four" to "two," to change the word "four" to "two," wherever they

found it, with the result that the term of every officer of the city was reduced to two years except that of the coroner who had the proud distinction of remaining on a four-year-basis. He was overlooked. Now, gentlemen, that is the way in which a charter for five millions of people was actually adopted by the Legislature. That is not theory. You may talk as much as you please about the theory of granting charters to cities by the Legislature. That is what the Legislature of the State of New York did in 1901, and I ask the members of this Convention, whatever their views are, whether it is not a far more proper, a far more dignified, and a far safer method of having the charter of New York, or any other city of ours,—whether it is not far more proper, dignified, and safe, to permit the revision to be made at home and be voted upon by the people. And that is not the only illustration to which I can call your attention. Take the so-called Gaynor charter which was sent up to the Legislature in 1911, I think, in the month of June. I am creditably informed that the instructions come with it to pass it in the two days remaining of the legislative session. Governor Dix, who was then Governor, said he would not sign a charter for New York city passed under such circumstances. So, it went over and at the October session of the Legislature in the same year, it was abundantly discussed and failed to pass.

I ask you to take notice again the tremendous hazards to which New York city, not to speak of other cities, is exposed, when the fundamental law can be changed in that way. That is why, Mr. Chairman, our Committee have reported in favor of giving to a city the power to revise its own charter and to vote upon it when revised. But, why take this vote in 1916? Many of the advocates of home rule claim that that is a measure making for delay. I differ with them in that conclusion. Let me give you a little history, for twelve states of the Union have adopted this home rule system in one way or another, so that some things have happened in the United States upon this subject. The home rule provision of the constitution of California was adopted in 1879. The city of San Francisco voted six times upon different forms of charter, and occupied twenty years in the performance, before it accepted the charter which I believe it now has. It is no certainty that any city of the State will accept the revised charter, which may be submitted to it. It seems to us that the way to begin is to find out first of all whether the people of the city want a new charter before they are put to this harrowing experience. Again the city of Minneapolis has had the opportunity to make its charter since 1898, under provisions similar to those which have been suggested to us in several of the bills,—I would not say exactly similar,

but substantially similar. The city of Minneapolis voted last autumn for the seventh time on a new charter and declined to accept it. In the state of Ohio, ten cities have absolutely declined to have their charters revised, under the home rule provision, and six have rejected the charters which were submitted to them. Therefore, it seems to me, that the argument that either the local authorities in the city or a small fraction of the people should be permitted to embark a city on that sort of an experience is not sound. It makes two fundamental assumptions which I think history does not support. The first is, that the few know that a city does need a new charter, and the second is, that if it has the opportunity it will quickly adopt one. Facts which I have laid before the Convention show that neither of these assumptions to begin with is correct. I think that a third assumption is made by many who favor the other system, and that is, that when a city does adopt its own charter it will adopt the kind of charter that they think the city ought to have. That is certainly an assumption, if held by anyone here, which is not borne out by the fact.

Now, why do we say after every eight years? Certainly there is nothing sacred or controlling about the term "eight years;" so we determined to find out whether they want a new charter or not, as soon as practicable, that is at the next election; and if they do, then the election for the Commission will be held in the year immediately following the presidential election, and at a time when city matters are most completely considered on their own merits. Of course, this periodic opportunity might be given every four years or every twenty years. I think that was the range of the suggestions before the Committee, and finally eight years were chosen. I think the opportunity of having that question submitted periodically, without agitation, is an immense advantage for the city. I think the cities ought to be able to manage their own affairs; but I don't think the cities ought to be kept in unrest always on a question of amending a charter or framing a charter, for that is a very technical proceeding. There are other elements that come in. The city of St. Louis held a charter election in 1911, and it cost \$88,500. They held another in 1914; they rejected the 1911 charter. Three years later they held another election and that cost \$78,000. The registration the first time was 155,000; the second time, 141,000, and the vote about 91,000 in each instance. Now, Mr. Chairman, the population of New York city, or rather the vote in New York city in 1913 for mayor was 627,000. It is quite possible, I don't know, that these St. Louis elections were special elections. If New York were to hold special elections for this purpose, on the same basis, it would cost half a million dollars, more or less, to hold such an election, and

I submit that the city ought not to be subjected to any such expense every year or two. I suppose that all the members of the Convention understand why the board in New York is to have sixteen members. The board of estimate of the city at present consists of the mayor, the comptroller, and the president of the board of aldermen, each with three votes, and of the president of the borough of Manhattan with two, of the borough of Brooklyn with two, and of the presidents of the boroughs of the Bronx, Queens and Richmond with one each. In other words, while there are only eight men, there are sixteen votes, and the reason for that peculiar arrangement is this: It was desired to leave the officers elected by the city at large in the majority in the board of estimate, and at the same time to have the boroughs adequately and fairly represented as among themselves. That is the reason why the board proposed for the city of New York, to be a board of revision, is to be composed in that manner. Now this paragraph brings up for the first time the provision which is characteristic of this amendment, that the action of a city, after having been taken either on the charter or on a charter amendment is to be laid before the Legislature subject to disapproval. I have seen it stated that that is objectionable, because that is the method by which Congress has granted complete home rule to the Philippines. If this were a serious argument, it could very easily be met by saying that if you demand that the Legislature shall act affirmatively and either accept or reject the charter without amendment, you will have the California system. Every charter in California has to go before the Legislature; every amendment, as I understand it, of a California charter has to go before the Legislature and the Legislature is obliged either to accept it or amend it. As a matter of fact the Legislature acts, as a matter of course, favorably. And I suspect that the Legislature of New York State would think very long and very deeply before it would annul a charter adopted by the people of the city of New York, after such a revision as is proposed in this article.

We come now to another paragraph which calls for further explanation: "The legislative authorities of the city may enact amendments to the charter or to any special or local laws affecting the property, business or local affairs of the city. Every such enactment shall embrace only one subject and expressly declare that it is such an amendment, and shall be subject to the approval of the mayor and of the board of estimate and apportionment of the city, if any there be. Every such amendment which relates to a matter specified under subdivision 'a' above set forth, and which does not change the frame work of its government or regulate the issuance of bonds, or remove restrictions as to taxation shall take effect as law upon its approval by the mayor of the city

and by the board of estimate and apportionment, if any there be. Every other such amendment shall be submitted to the Legislature during the first week of its next regular session and shall take effect as law sixty days thereafter, if, in the meantime, the Legislature shall not have disapproved the same by joint resolution." Now it may very reasonably be asked why, in giving the people of the State the right to vote upon a charter, did not the Cities Committee give the people also the right to vote upon amendments to the charter. The answer to that is two-fold. There are some who think that that is a form of direct legislation which is inherently objectionable. But the practical objection seems to me to be found again in experience. I happened to be in San Francisco last March when they voted on thirty-six amendments to the charter which they adopted in 1899. I do not know how many amendments may have been passed or considered in the meanwhile, but I was there then. Out of the thirty-six amendments, five were adopted. The registration was 162,000 and the vote was 56,000. The cost of the election was \$36,000, so that it cost the city of San Francisco \$7,000 for every amendment which it secured. One of the amendments that was adopted was to give the superintendent of public education a vote in the board of education. Another, which was not adopted, was to provide that the union label should appear on all city printing. That is the reason, Mr. Chairman, why I said that the assumption that the city will adopt the kind of charter that the enthusiasts think it ought to have is not well taken. The city of San Francisco rejected five charters before it finally got one that made it necessary to submit such questions as those to the popular vote. The Cities Committee was not unanimous, but was very nearly unanimous in believing that the cities of the State of New York, and certainly the city of New York, should not be exposed to an experience like that. Now, if you do not allow the city to vote on its own charter amendments, there seems to be only two other ways in which those amendments can be made. One is to permit them to be made by the Legislature, which is evidently wholly inconsistent with the home rule scheme. The way between those two, it seemed to the Committee, was the way which they suggest, that the local government of the day may take the initiative in proposing the amendments; that, as to the minor things, those amendments should become law without coming to the Legislature, and, as to the major things, they should become law unless the Legislature disapproves; within the period of sixty days after their submission.

I come now to a discussion of that phrase which no doubt has

attracted the attention of every lawyer, making it necessary to submit to the Legislature every amendment of a charter or law which changes the framework of its government. Why did the Committee use that word "framework"? We know perfectly well that it has no legal significance at the present time, and we used it, in part, because it had none. We hoped that the courts will give it a meaning unhampered by tradition and precedent. The committee had a very clear idea in mind when it did that, which I can express, I think, so that this Convention will perfectly understand it. When you give to the government of the day in a city the authority to change the charter, as we are proposing to give it that authority, you create in the city precisely the situation which has resulted in the Legislature in what people call "ripper" legislation. There is nothing to prevent the government of the day from changing the title of a department, reassigning its duties and doing precisely the thing which both parties have done at Albany when they had the chance. I think that human nature is just the same in the city of New York as it is at Albany, and that, with that opportunity, there should be given some opportunity to check it. That is the reason why we used this expression. Now I can tell you what I think it means, and I presume that I speak reasonably well for the whole committee. If the city of New York were to create a department of markets, that would be a change in the framework of its government for it is setting up a new department; if it were to abolish the Chamberlain's office, as has been proposed, that again would be a change in the framework of its government. If it were to change a single-headed police department to a board that again would be a change in the framework of its government. In other words, what the committee wanted to accomplish by that phrase was to provide that changes so fundamental as to affect the structure of the city's government should be submitted to the Legislature with the opportunity of disapproval. We do not think for one moment that it affects in any way the grant of powers in subdivision "a," that is in the general grant of powers which are more particularly outlined in paragraph "a:" "The power to organize and manage all departments, bureaus, or other divisions of the city government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees"—we think that any change whatever within a department might be made by the city; and, unless it involved a change of the charter, it would not have to come to the Legislature. But if it affects the structure of the government—that is what we are driving at; the evil that we wanted to prevent was ripper legislation—then it must be submitted to

the Legislature and there should be that much check upon that sort of thing, just as this Convention has a report before it now to create certain departments that cannot be changed by the Legislature. The paragraph as to regulating the issuance of bonds and removing restrictions as to taxation was put in for the benefit of the smaller cities; and as to that, it was pointed out to the committee that at present some of the cities, at any rate, can incur a debt only on the submission of the question to the taxpayers, and it was argued with force, and I think with justice, that before the government of the day could make a change affecting that, it must be submitted to the Legislature. You may say, why give the government of cities such powers? I hope I have already made that clear. If you do not give it those powers, the problems of the cities cannot be adequately solved. I think the criticism which has been made that this would tie up the cities for 1916 is well taken, and that there ought to be some provision by which proposed amendments of city charters could be submitted to the Legislature of 1916, perhaps as late as February 15th. I say that on my own authority, without consulting with the Committee, but it is certainly a well taken position. It ought not to be impossible for the cities to get any relief during the coming year if the Constitution goes into effect in 1916. My own belief is, Mr. Chairman, that that clause, that authority, that power, will make it quite unnecessary for many cities to go to the trouble and expense of revising their charters. I think that the modification of existing restrictions which can be brought about in that way will be entirely sufficient. Nevertheless, it must be recognized that when you require the co-operation of the Board of Aldermen, the Board of Estimate and Apportionment, and the Mayor, you have created a situation in which those parties may be willing to change anything else in the city government, but they are not likely to do anything to affect themselves. That is why it is necessary to submit the question to the people whether they want to revise their charter. They may want to elect aldermen by boroughs, if you please, in New York city, instead of from districts. They may want to elect some at large. The only way to get the judgment of the city as to those three fixed points, if you please, is to give it the opportunity to express its judgment in some such way as is proposed. Now as to lines 21 to 24, about publishing, I think that should be put at the end of the section. Probably that raises no question. I think that the last clause in the section can be worded a little better when we come to pass upon the specific amendments. I think, therefore, Mr. Chairman, that I can dispose of the rest of the bill by way of explanation very briefly. Section 1 of the present article XII is divided into two parts, and as to the first

part, which we call section 1, it reads as follows: "It shall be the duty of the Legislature to provide for the organization of new cities and to prescribe their initial form of government in such manner as shall secure to them the exercise of the powers granted to cities in this article and by general laws, to provide for the organization of incorporated villages, and, except as otherwise provided in this article, to restrict by general laws, applying to all incorporated villages, or to all cities of a class, the powers of taxation and assessment so as to prevent abuses in taxation and assessment by any city or incorporated village." You will observe, if you compare that carefully with the existing Constitution, that we say nothing about regulating the borrowing of money or the creation of debt for two reasons: First, because we deliberately wished to give the cities full control of their borrowing power, subject to the debt limit, without regard to such limitations as the Legislature has heretofore imposed. For example, last year a law was passed, was introduced and I think passed, to increase the amount which the city of Albany might spend for sewer bonds from \$1,200,000 to \$1,400,000. What we want to do is to make it unnecessary to come to the Legislature for a bill like that. The debt limit gives the city of Albany and all other cities a certain borrowing capacity. We want to leave them absolutely and entirely free within that debt limit to use that borrowing capacity as they please.

The matter of loaning credit is forbidden by a specific article of the Constitution and therefore we have left it out of this section. We have kept in the requirement that all cities, new and old, must be restricted as to the powers of taxation and assessment so as to prevent abuses in taxation and assessment by any city or incorporated village. That illustrates perfectly the necessity for special laws now and then. The Constitution as it now stands, in section 10 of article VIII, forbids cities over 100,000 inhabitants from laying a tax of over two per cent. on their assessed value. But when we proposed to make that uniform so that it should apply to the small cities as well as New York, we were met with the statement by members of the Committee that it would not fit, it would not be large enough in its application to some cities. I do not know why that is, unless it is that they are not assessed at full value. At any rate, the proposition was made, and earnestly urged, that the provision which applies to cities of over 100,000 in the Constitution will not fit the cities of less than 50,000, or less than 100,000. That is why we had to leave that in. Now our section 2 is a part of the present section 1. We put it in a new section, because we think the Committee on Revision may very likely wish to transfer it to article III, where, it seems

to us, it belongs. We have changed it in only one particular which seemed to be necessary because of the powers that we propose to give to cities. It reads: "The Legislature may regulate and fix the wages or salaries"—and we have inserted "except as otherwise hereinafter provided in this article," because that might give the Legislature the authority to fix salaries in cities, and we have provided that they shall not have that authority. We then say that they "may also regulate and fix the hours of work or labor and may make provisions for the protection, welfare and safety of persons employed by the state or by any county, city, town, village", etc., with the same thing as to contractors. In other words, the amendments are only those which are made necessary by section 4. I think I have sufficiently explained the change that has been made in our section 3, which is the present section 2, in connection with the grant of power to cities. Turning for a moment to the last section, our section No. 5, that is section No. 3 of the present Constitution, amended only in two slight particulars: First, it is to include the counties of Queens, Richmond and Bronx, with New York and Kings, in the first part of the sentence, as to the propriety of which I think there can be no question. Then the last part of it has been amended so as to bring cities of the third class within the requirement that their election shall take place in November in an odd-numbered year. That was one of the requests contained in the proposal received from the Mayors' Conference, and therefore we felt that in accepting the proposal we were doing what would meet with the public sentiment of the smaller cities in that regard.

It seems to me, therefore, Mr. Chairman, that I am justified in saying that this proposal coming from the Cities Committee does provide a ready remedy for all we aimed at; that it makes a special grant of power to the city, and gives to the city the initiation of the charter, so that no charter and no charter amendment can come except from the city itself. And may I pause just long enough to point out that such amendments will reach the Legislature for its consideration in a different way from that in which they do now. They may now go up from the mayor, they may go up from some department or they may go up from some individual. Under this plan, when they get to the Legislature they will represent the mature judgment of the city authorities, after public notice and public hearing. It is a very different proposition to think of declining to amend a charter after that careful consideration and declining now to report out of a committee a bill that perhaps only the mayor or some other officer wants. I think, as I have already pointed out, that in excluding the Legislature

entirely from the field, in which cities have an exclusive grant, and in submitting through action outside of that field the suspensive veto of the locality, we have really preserved the benefits of special legislation without incurring its very well-known and justly dreaded disadvantages. By giving the power of amendment to the government of the day all of these delays in revising charters are obviated. They can begin immediately to revise their charter and make it fit better the needs of the hour. I thank the gentlemen of the Convention very heartily, Mr. Chairman, for listening so long and so patiently and so attentively to this exposition which has had to be lengthy and has had to be technical. I think that in the consideration of this amendment it will facilitate action by the Convention if we commence the consideration of it with Section 4; because, if that be adopted, the other amendments follow almost as a matter of course. I think the debatable ground lies there and I therefore move, Mr. Chairman, that the Committee of the Whole now take up the consideration of Section 4 of this pending amendment.

The Chairman — The Chair wishes to state its understanding that there are one or more substitutes for this entire measure which are to be introduced. It seems to the Chair that it is proper that those substitutes be before the Convention in their entirety at the outset of the argument, and it will therefore recognize any delegate who at this time desires to introduce a substitute measure.

Mr. Wickersham — I rise to a point of order. The rules provide a means of considering this measure and unless the rule is suspended I rise to the point of order that the rule must be followed.

The Chairman — The point of order is probably well taken. The Chair is only making a suggestion, which it feels would be to the convenience of the members of the committee. If the point of order is insisted upon, of course, it is well taken.

Mr. Wickersham — Unless the chairman of the committee has some different wish, I stand on the point of order.

Mr. Wagner — Mr. Chairman, I was going to suggest that amendments which are offered in the way of substitutes — it would be difficult to offer them as we consider each section, because naturally a substitute affects all the sections and for the intelligent discussion of this question it seems to me it would be better that we have all amendments which are in the nature of substitutes before the Convention when we proceed with the discussion.

The Chairman — That was the Chair's suggestion. But if the point of order is insisted upon it is well taken.

Mr. Root — Mr. Chairman, I hope the point of order will be insisted upon. This is a very complicated subject. It is not plain

and easy. There has been much misunderstanding regarding the nature and effect of the bill reported by the Committee on Cities. I am inclined to think that we will make better progress if we confine our consideration, in the first place to the bill that is reported; and that any attempt to branch off into the consideration of other plans will involve us in confusion that will prevent any progress at all. When the bill reported by the Committee is understood and perfected — and, of course, it doubtless can be improved and perfected, — when that is accomplished, the Convention will be in a position to consider whether some alternative scheme for accomplishing the result would be better. But until that bill reported by the Committee has been considered, understood and perfected, I apprehend that to turn to the consideration of any other plan would merely delay our proceedings, so I hope the point of order will be sustained.

The Chairman — The point of order is sustained and the question now is upon the motion of the delegate from Westchester, Mr. Low, that we proceed not to the consideration of section 1, in the regular order, but the consideration of section 4. All in favor of that motion will say Aye, opposed No. It is carried.

Mr. Foley — Mr. Chairman, I assume that Mr. Low's motion carries with it the entire substance of the Cities Committee's report, and I shall discuss it just as generally as I think that assumption applies. Now, as one of the minority members with Mr. Franchot, of the Cities Committee, I submitted a minority report, and that document is on the files of the members, No. 36. I think it would lead to a better understanding of the problem before the Convention if the delegates would do us the favor of reading that report with the proposal submitted by the Committee. We have struggled in the Cities Committee at hearings and behind closed doors with this problem for the past four months. We have had before us advocates of thorough-going home rule and even those who asserted that the cities should be entirely independent of state control. And at the other extreme we have had those who favored leaving to the Legislature the regulation of municipal affairs and the grant of further powers to the cities. Our chairman, Mayor Low, has referred to his experience in city government, and certainly his splendid service to Brooklyn and New York has qualified him to deal with the problem of the cities. His experience as to municipal affairs has been with the city. Mine with the State. The questions that have arisen have been answered, in my mind, by my experience as a legislator in the past nine years, interested in the affairs of the city government, yet having the view-point of Albany rather than of the locality affected. Included in my legislative experience was one year as

chairman of the Committee on Affairs of Cities of the Assembly and from lessons learned in that time in relation to the cities of the State I based my opposition to this measure.

Now the Chairman has designated his proposition as a compromise and in that designation I regard it as representing a mingling of the sentiment of the members of the committee. But in the process of compromise, principles have been sacrificed, and the result is an absurd and cumbersome departure from approved systems of administration. To my mind the proper function of a constitutional convention is to profit by the experience since the last revision. I am not advocating here the high-sounding much-used doctrine of home rule but a broader grant of powers to cities, and I am arguing that this Convention should profit by the problems presented to us in this very room since 1894. The Committees sought for a plan of local government and found it not in the United States but in the distant Philippines. The similarity of conditions, with those of our cities and especially in the city of New York, is true in but few respects. The population of the State of New York and that of the Philippines is about the same, but there the comparison stops. The Philippines government act of July, 1902, provides that all laws passed by the government of the Philippine Islands shall be reported to Congress, which hereby reserves the power and the authority to annul the same. I had my doubts about the propriety of selecting the Philippine Islands as a successful experiment in local self-government and was quite convinced of it when I read the statement of ex-President Taft as to the reasons for the adoption of this nullification idea. In 1902, shortly after the adoption of the scheme, he stated that out of the population of over seven million, only about one-half million were anywhere near civilized and that the United States government had to deal with a problem that it did not have to deal with in the cases of Porto Rico or Hawaii and that the people of the Philippines were lower in civilization and intelligence than the lowest form of African negro. "The desire of the United States," he says, "is that self-government should be given to the people in as large a measure as they are capable of carrying it on. People, 90 per cent. of whom are still in the state of crass ignorance and all of whom have been for 400 years denied any experience of self-government at all, cannot be made over in a decade or taught the self-restraint and political sagacity needed in a successful self-government." Those are Mr. Taft's words. The distinguished First Vice-President of this Convention, Dr. Schurman, in his report on the Philippine Islands, from the commission which bears his name, pointed out the incapacity of the Filipinos for self-government. The report says: "Their lack of education and

political experience combined with their racial and linguistic diversities disqualify them to undertake the task of governing the archipelago at the present time." Thus the scheme was most essential for the government of this newly established province. Now compare the situation in the cities of New York State with their experience of over a century in the management and control of their own affairs and with a population — educated and enlightened. The inspiration, therefore, of the Committee was unfortunate unless the majority desired to regard the cities of the State as conquered provinces. The plan establishes a protectorate at Albany, it assumes abuse of authority by the cities, it implies incompetency. I propose to discuss the possible effect of this Filipino home rule plan of nullification, as it will affect the cities and the State, later in my criticism of the pending amendment.

Mr. Franchot and myself pointed out in our minority report that the sources of criticism of the present scheme of municipal government were two-fold: First, the interference with local affairs by the Legislature; and, second, imperfect power over matters of city concern. I regard the first as the worst evil of those mentioned. As long as interference in purely local affairs continues at Albany, so long will dissatisfaction exist among the cities. The argument of Mr. Henry Murphy in the Convention of 1846 and of Mr. Delancey Nicoll in the Convention of 1894 apply just as forcibly to-day, and I suggested only yesterday that Mr. Nicoll read his speech in the last convention on the evils of special legislation. He could not improve it one bit, in the light of the history of the past twenty years, and his prophecies included in that speech have all been fulfilled. The evils of special legislation affect not only the cities, but also the State in the breaking down of legislative efficiency. Special laws are piled up year after year and written into the statute books only to be amended and repealed in succeeding years, as the needs of the cities grow. Thus New York City's charter has become a crazy-quilt and the State has expended thousands of dollars in digesting the various independent local laws, Consolidation Act provisions and other statutes relating to the city of New York still in effect. The Chairman, Mr. Low, referred to the Gaynor Charter. I want to correct the impression that it was hurried through the Legislature. Mayor Gaynor first recommended its passage, I think it was in March or February of 1911. It was considered for at least seven or eight months. It was not until September 26th — I think September 26th that it was finally disposed of in the Senate. But the majority of its provisions have since been adopted piecemeal, and incorporated in the charter of the city. Dr. Low has referred to the number of

special bills affecting cities passed in recent years. I find from examination of the bills introduced in 1915 that out of a total of 2,290 bills, 307 special city bills were introduced, many of which were reprinted in different forms. Thus the time of the Legislature was taken up with minor matters in which a majority had no actual interest. The State was put to a large expense in printing; cities are compelled to have their representatives appear here in favor or against legislation, the city of New York maintaining its representative here during the entire session. Bills were considered by members not familiar with the problems and the time of the members were taken away from the consideration of subjects more important to the State.

During the last six years the total number of special bills introduced was 2,776; 1,423 of which passed and 247 were rejected by cities under the suspensory veto provision of the Constitution. From the standpoint of the city the evils are even worse. The system breeds irresponsibility in city authorities. The city administration places the blame for its shortcomings upon the denial of legislation in Albany, and the city is compelled to wait for relief. Another cause of criticism and evasion of responsibility by the local authorities is based upon the passage of so-called mandatory bills. Many matters that are brought here of minor consequence could be disposed of promptly by the local legislative authorities of the cities. Bills are sent to Albany with no desire to secure their passage, and sometimes when passed are vetoed by the very officers who advocated them. I know of such an example this year when there was a bill sent here from the city of New York which was spoken of in the highest terms as going to save millions to the people of our city, and the Legislature passed it after simply modifying its form, and not its substance in saving the millions. It was modified as to the appointing power of the officer who was to administer the department, and yet when it reached the city of New York it was vetoed by the mayor. It has been pointed out that of the bills passed during the last six years, 23 per cent. were city bills, and the cost of printing could not have been less than \$50,000 a year. Abolish the special city law and you have removed the greatest single source of our enormous annual crop of legislation. Now, the Convention of 1894 thought they had solved the problem of interference from Albany by the adoption of the suspensory veto by local officers. But let us see how far it succeeded. The plan at that time seemed to cure all the evils complained of and the debates contained the same argument, same criticism, and the very same solutions which had been urged in this convention. But the suspensory veto has only partly improved the situation. Bills have been passed over the opposition of the

local authorities; for instance in 1907 seven laws were enacted without the consent of the city authorities. The Livingston Street Widening bill was passed here over the veto of Mayor McClellan. In Brooklyn an improvement had been laid out, the widening of Livingston street, and the board of estimate determined that \$2,000,000 of the cost of that improvement should be borne by the property owners in the area benefited. The property owners had their day before the board of estimate. Under the charter, their relief and their place of resort was with that board, and the board of estimate decided to assess them for the improvement which was bound to follow. The property owners came up here with a bill placing that two million dollars on the entire city and removing the special assessment. It was passed by the legislature, went to the mayor, was vetoed by him, and came back here and was repassed over the veto and finally approved by the Governor, notwithstanding the disapproval of the mayor. In the same year the Public Service Commissions Law was passed over the veto of Mayor McClellan, which placed a mandatory expense on our people down in New York city. The Public Service Commissions Law provides that the Public Service Commission, in the First District, whenever it needs money, may demand it from the board of estimate, and if the board of estimate does not give it, goes to the Appellate Division and secures the necessary order directing the city to pay the money. So I say that these evils are not cured by a suspensory veto. When you tell me, Mr. Mayor, that you have not had any of these cases in the last six years. I will tell you why you have not had any repassed over the veto of the mayor of the city of New York. For four years at least, from 1911 to 1914, you had at least one branch of the Legislature in sympathy with the mayor, which made it quite improbable that any bill would be passed which the mayor disapproved of. Since then you have had one house at least in sympathy with Mayor Mitchell, and no bill has been passed over his veto and that is the reason there has not been any abuse of this suspensory veto scheme. But just wait until both houses, are opposed politically to the mayor of the city of New York and you will see a repetition of what happened in 1907 in connection with the Livingston Street Widening bill and the Public Service Commissions Law. It depends upon politics solely and simply. I have pointed out that the evil of special legislation is not only one of prevention but of anticipation. It is not the prevention of such legislation in its effect on New York city, Rochester, or Buffalo, by the veto, but it is the anticipation and trouble of coming up here to meet hostile legislation that is of so much concern to the city. The city should not

be compelled to meet even the introduction of bills at Albany interfering with their local affairs. The remedy lies in preventing the introduction of special bills relating to city government. Take the bills introduced in 1915 which dealt with the most important subjects. One legislator from New York wanted to abolish funeral parlors in New York city. Mr. Latson, you will remember the bill. I think you appeared at the time the bill was up for consideration.

Mr. Wiggins — What?

Mr. Foley — Funeral parlors; mortuary chapels, where bodies could be kept to meet the situation in New York on account of numerous apartment houses and hotels.

Mr. Latson — I would suggest, Mr. Chairman, that the gentleman describe that a little more fully and give it what might be its proper title, a bill to prevent a single individual from assuming to pursue his own vocation on a particular spot because a resident protested.

Mr. Foley — That is right. It was, in effect, to prevent mortuary chapels in a neighborhood where the people did not want them.

Mr. Latson — Yes.

Mr. Foley — It was a proper measure for the local authorities to consider, and Mr. Latson or anybody else who was interested in the bill should have been called upon to oppose or favor it there and not here.

The Chairman — Mr. Foley has the floor and he has refused to yield.

Mr. Foley — Yes, I refuse to yield because I am afraid I might convince him. Another legislator wanted to abolish slaughterhouses in the city. The control of that proposition properly belonged to the board of aldermen. Bills changing the course of study in the College of the City of New York and the control of its buildings were introduced and passed; a bill abolishing the coroners was reprinted four times before finally passed, causing an additional expense to the State without any corresponding advantage to the city. That matter could well have been disposed of in the city hall at New York. A bill was passed to authorize the president of the board of aldermen to preside over the board of estimate in the absence of the mayor; and the Cities Committee of the Senate and Assembly deliberated for many weeks over the question as to whether the board of health should have jurisdiction to suppress mosquitoes. Other bills provided for the creation of a new deputy police commissioner, the removal of garbage, and the question of the exchange of property between departments in New York city. All of these measures could have been successfully and more intelligently disposed of in the local legislative

body. Think of the absurdity of dealing at Albany with such matters of petty local concern. I regard the proposal of the majority as vitally defective in omitting a clause to prohibit the passage of special legislation affecting the cities of the State. It not only fails to do so, but continues the present pernicious system of providing for the incorporation of new cities by special laws. You will find that on page 2 of the proposal, where the Legislature is authorized to pass special charters for new cities. We have already established a policy in this State with reference to the government of third class cities by providing for five optional schemes of government and third class or small cities have the right and power to vote on any one of those five plans; the commission form of government and various modifications of it, or the city manager plan, or the second class cities charter may be adopted; and a simple referendum submitted to the people will decide that question without the necessity of coming up here and taking our time. Now, I speak very feelingly on this subject because as Chairman of the Assembly Cities Committee I had eight different charters before me concerning cities of the State, coming in here in volumes of two, three or four hundred pages, and we were asked to consider each bill, and apply our experience to the needs of the localities. As a matter of fact, the bills simply came to Albany, they were looked over as to form, and they were passed, without any serious study, without any real consideration of their merits. Since 1874, the Constitution has provided for the incorporation of villages by general law only, and it has worked most successfully. The amendments to the General Village Law have averaged less than ten a year. If successful for villages why not for cities? So much for the problems which we ought to recognize so far as special legislation is concerned. Now, the second proposition which the question of home rule involves is a grant to the cities of adequate power over their own affairs. The first relief, you will see, is negative or preventive, and the second is positive or affirmative, in so far as it involved power to do the thing that the locality desires. It would be useless for me to run through the discussion which has taken place in our various constitutional conventions, in our legislative committees and the messages of governors. Home rule variously has been called the foundation of our governmental system: the basis of our government, the fundamental principle in our institutions; the school which fits people for self-government, and the result a most efficient preserver of civil liberty. Judge Herrick, in his splendid opinion in *Ratbone against Wirth*, 6 Appellate Division, 277, which held that police officers were city officers, says that "the right of self-government lies at the foundation of our institutions,

and is a right not only to be carefully guarded but every infraction or evasion of it to be properly met and condemned. If the citizens of the city are incompetent to govern their home affairs, how can they be expected to be fitted to properly determine those of the State and nation? ", and if Mayor Low will but read that decision I think he will find that it decided that police officers are city officers. Judge O'Brien pointed out in the case of the People against McKinney, 52 New York, 374, that home rule was "the very essence of every republican form of government and that local self-government is the proper school in which the citizens acquire the rudiments of self-government and hence these institutions have been justly regarded as the nurseries of civil liberty. The principle of home rule or the right of self-government as to local affairs existed before we had a constitution," and was established by Magna Charta, says Judge Vann in *People ex rel. Metropolitan Railway Company against Tax Commissioner*, 174 New York, 117. The remedy for the second source of criticism,—inadequate power in the cities—must be found in a complete grant of powers in local affairs, subject to the general laws of the State. I am one of those who agree with the proposition that the sovereignty of the State should be maintained by the passage of general laws, and I do not think any one in this Convention advocates the complete separation or divorce of the city from the State. The majority recognized the demand for home rule by making an "exclusive grant." I find it is not exclusive, but that the powers are most elusive and the language delusive. We of the minority have described the amount of home rule granted as amounting to zero. And we think that is the exact measure of home rule granted. While the proposal starts off with an exclusive grant of power in the city, we find that it is not exclusive. We have pointed out that its language is vague and confusing. Under the scheme of the majority certain power over compensation and employment of city officers and employees is given exclusively to the city, except if the amendment affects the "framework," it must be submitted to the Legislature, under the Filipino scheme of nullification. The word used is "exclusive," and then the provisions and limitations which follow take away all the original grant until there is nothing left in the nature of home rule.

Mr. Foley — I would be glad to answer all questions afterwards. Every other amendment must also be submitted to the Legislature for the same treatment, that is, for nullification because the scheme is that the city shall pass the amendment in its local Legislature. They shall send it to the mayor and then to the Board of Estimate and if it survives those two agencies it comes to Albany in the first week of the session and there the amendments remain two

months, until March 1, 1917, which is the next date when they may become a law and on that date if not nullified previously, they go into effect. All amendments, whether local or involving State approval require first the consent of the board of aldermen or the local legislative body, then the consent of the mayor and then of the board of estimate, if any. Under this language both legislative bodies might as well be eliminated as useless, for the mayor has an absolute veto and there is no way of overriding his disapproval of a measure. It is evidently intended that few amendments from the city should reach Albany. The courts will have to determine the meaning of the word "frame-work" and define the overlapping powers. Financial obligations of the city will depend upon doubtful language conferring powers so vaguely, that cities will hesitate to exercise this elusive grant and all amendments will be sent by the city to Albany as a matter of course, and as a matter of safety. The month of February in each session will be the waiting period for cities. Every city will have its amendments up here, waiting with fear and trembling to see if they are nullified and no one will know where it is at until March 1st of each year. The old order of consideration and bargaining for patronage will continue, aggravated by the doubt and confusion of the scheme. Do the gentlemen of the committee expect to remove by this amendment the ordinary human desire to secure things as a condition of the nullification? There have been such suggestions made around Albany and in the cities and that form of bargaining will continue. Again the majority proposal gives the Legislature the right to pass special laws relating to the "government of cities not within the powers granted the cities by this article." Special legislation therefore is authorized, bills can be introduced without limit and the cities must be prepared to defend themselves against hostile legislation, as now. There can be no broader term than "government" used in relation to cities. Webster defines it as "the rules and principles by which the rights and duties of citizens and public officers are prescribed and defined," and Black's Law Dictionary as "the framework of political institutions, departments and offices by which the executive, judicial, legislative and administrative business is carried on." Thus "government" is framework. I wish that I could have gotten one of the efficiency engineers from our Bureau of Municipal Research, in New York, to get me up a diagram, as they did for Judge O'Brien's commission, of the overlapping functions of this scheme showing the government of the city in a circle, the exclusive grant under sub-division "a" of this proposal to cities would be represented by a dot in its center, while everything else within the circumference of city government, its functions and powers would be within the control of the Legislature, and subject to the passage of special laws. Will the Court

of Appeals sustain amendments by the Legislature to the second-class cities law or the optional third-class cities law, since all the classifications are forbidden? Who will amend the second-class cities law? How is Syracuse going to get away from the second-class cities law so far as local control is concerned, or how will other second-class cities, when all the present sources of their grant are tied up in a general law? The language of the present Constitution is simple and has given rise to but little litigation compared with the absurd provisions of the pending measure and the endless judicial interpretation necessary to construe it. The plan also provides — and this is the real feature of humor in this plan that I wish every delegate would get — the plan provides for a Billy Sunday charter rally. The fifty-six cities of the State are called upon in November, 1916, in the midst of a presidential and gubernatorial campaign to say whether their existing charters are out of date. What will be the sentiment of cities like Mechanicville, Saratoga Springs, Buffalo, White Plains and other cities, with new charters upon such a question, with charters but one year in operation? Why this expense? Why should Buffalo vote on this question when their new form of charter will go into effect in 1916? Why should Mechanicville or White Plains which has just become a city, or several of the other cities whose charters have been revised in the recent years, vote on the question as to whether they shall have a new charter within a few years after obtaining a new one from the Legislature? Not only that but it is proposed to hold an election in an even numbered year, in a presidential or a gubernatorial campaign. Our Constitution has laid down an excellent policy as to municipal elections, a very salutary provision, that municipal concerns shall be kept independent and apart from presidential campaign and not disturbed by Federal problems. We will either have no attention at all paid to the charter, or the party that wants to thrust out the existing administrations in the different cities will vote for a new charter. Then as to the element of expense. Mayor Low, himself, has spoken of the cost and you thrust it upon every one of the fifty-six cities of the State to vote on this foolish question as to whether there shall be a new charter in 1916. Talk about home rule, the very theory of home rule is that cities shall have the right to vote when they please. It should be in its nature. Mayor Low himself, in an address to the Cities Committee of the Convention of 1894, praised this feature of our Constitution. I think it was he that suggested at that time that the elections of cities should be kept separate from the State elections. Now just let me read the timetable of this new charter train which starts in 1916: In 1916, the people vote on the question of revision; one year later, 1917, if the people decide for the revision, there is the vote on the charter

commission; 1918 — still more elections — the vote on the charter; 1919, the submission of the charter to the Legislature for nullification; 1924 and every eighth year thereafter, the vote on the question of new charter, and so it proceeds. If a majority decides for a new charter more elections follow fast; the delegates are elected and then the charter is voted upon and last of all, if approved, is submitted to the Legislature. The scheme is absolutely rigid. You cannot change it except by constitutional amendment. If the delegates from up-State cities, and sixteen for New York city, should be changed in number, we will have to put through a constitutional amendment. It is contrary to all the theory of constitutions, that matters of elasticity shall be left to the Legislature and not bound up in rigid constitutional provisions. And the crown of all the scheme is that the charter, having been adopted by the people, should come to the Legislature for nullification. That is the crowning work of this whole scheme. It is argued that in California the Legislature has never refused to grant a charter. Well, if the power is atrophied elsewhere, why impress it on our Legislature if you do not expect the Legislature to exercise it? The Legislature may thus destroy the entire work of construction or charter revision. If it does not like the revision it may vote to nullify it. If you want to fix a State policy for cities and for example put in a provision against municipal ownership, I suggested to the Committee that the Legislature should act before the people, then if it did not like the charter it could be sent back to the local charter commission for revision, and you would not then have to throw away thousands of dollars spent in attempting to revise a charter. I regard this proposal as extremely vicious and one which this Convention should promptly repudiate. The approval of the people should be final. If the decisions of the Court of Appeals in our State in the last twenty years are any indication of what will follow under this Filipino scheme of home rule, every special act of the Legislature relating to the government of cities will be sustained as constitutional and the "exclusive" grant having accomplished its object of securing votes for its adoption will vanish the day after election. No amendments can be made to the city charter until March 1, 1917, and the cities of the State will be placed in a twilight sleep for that period; nor can any amendments be made to a charter, no matter how necessary and important after the first week of the session. It is not intended that any exclusive powers should be given to the cities.

The scheme of grant of powers to city and State is unscientific. It is not a division, it is an overlapping. Matters of no importance must be submitted to the Legislature, while matters of extreme importance to the State, establishing State policy, need not come here to Albany, and I have pointed out with Mr. Franchot in the

minority report that the recall of public officers would be adopted by cities under this proposal. It provides that you may fix the "method of removal of officers" and you certainly could provide for their recall. Now, someone says, well you are going to get a lot of powers from the State to the city under this scheme and Mayor Low referred to the home rule bill of 1913, and the great grant of power it gives. Well, we tried in the Committee on Cities to legalize the home rule bill of 1913, to constitutionalize it, by providing that article III, section 1, which refers to legislative powers of the State should be vested in the Assembly and Senate. That would permit the Legislature to delegate to the cities the power they attempt to delegate under the Home Rule Act, and which the Attorney-General and the courts held it could not delegate on the ground that the legislative power was in the Legislature and the right to amend charters or to change the form of government could not be delegated to a board of aldermen or council or local legislative body. When this amendment was offered it was voted down. So you can see just about how much exclusive grant is intended to be given by this scheme. Powers conferred on cities of the State are subject to general law of the State *applying to all of the inhabitants*. That is the language "all the inhabitants" are subject to the general law of the State. That limitation should be excluded. The limitation adds more confusion to the scheme, as I have pointed out, because the general laws do not apply equally throughout the entire State.

Defect after defect can be pointed out in this scheme. Its impracticability and clumsiness are apparent, and careful consideration of the measure only adds to its doubt and confusion. State functions are not defined and local functions not enumerated. Can the cities control their own highways and streets, lay out parks and construct rapid transit railroads, erect courthouses, reject valid claims against them, regulate taxation and grade crossing, or do all of these powers continue as State functions? The Court of Appeals has held that every one of these powers reside with the State and that the State could reach out at any point through its officers appointed by legislation to carry out these powers. The Buffalo Grade Crossing Act was sustained on that ground, that the officials were not local officers, the court of appeals holding it was a matter of State concern, the public safety of the State. Taxation is affirmed to be a matter of State regulation, in the Special Franchise Tax Case, in 174 N. Y., and Judge Vann pointed out that the establishment of boards of assessment to fix taxable franchise values at Albany was not an interference with localities under the Constitution. In the language of this grant there is a serious question whether taxation is not delegated to

the cities, because you have limited the control of the Legislature to "restrictions as to taxation," and, by implication under this so-called, "exclusive," grant, all other matters relating to taxation might be given to the cities and taken from the State which has always controlled the subject. Can the Legislature resume the powers delegated to localities and assume the direct control of matters pertaining to government, as the Court of Appeals said in the case of *Simon v. Bradley*, 207 N. Y., 592, it can do under the present Constitution? In conclusion, will not the defects and abuses of our present municipal government continue? The plan recognizes no ability on the part of the citizens of the State to regulate and govern their local affairs. You have imposed this nullification which questions that right or ability. It throws away the experience of the last twenty years and the advance in our municipal administrations and disregards the advances made in other states and their constitutional provisions for home rule. To my mind, the Committee has mistaken the proper form of compromise. It has been rumored that unless this proposal for home rule is accepted by the Convention, then nothing will be granted, but the cities will not lose anything thereby and their powers will not be diminished by the recommittal of this measure or its "perfection," as the President put it. To my mind, the compromise plan adopted was not a proper form of compromise. Mr. Ray B. Smith and Mr. E. N. Smith advocated in the committee and before the committee a plan to delegate all these home rule functions to the Legislature. It was a simple grant of power and the Legislature could then define all these details of distribution of functions between the city and the State, and avoid the rigidity of the scheme proposed by the Cities Committee. On the other hand, Mr. J. L. O'Brian's first proposal and Mr. Franchot's provided for a constitutional grant of home rule as contrasted with legislative home rule. I think that a fair-basis of compromise is that which Mr. Franchot and myself have submitted as an amendment here, combining legislative control and constitutional control in the right of the cities to adopt their own charters. The advantages of that scheme are that the cities can come here and ask for charters and amendments by general laws. If the Legislature does not pass them, they have got a remedy. They can go to the people and submit the question as to the adoption of the charter under the Constitution, without any interference from the Legislature whatsoever. Mr. Franchot's proposal is No. 796. It provides an optional scheme of home rule, maintaining the sovereignty of the State by legislative control through general laws. It continues the present system of legislative charters for cities for the benefit of those cities that desire it. It settles many disputed questions as

to the proper functions of city and State. It authorizes the Legislature to grant a full measure of home rule by delegation of its powers to the cities. Therefore, under that scheme, if the Legislature wanted to repass the home rule granted in 1913, it would have the right to give the cities power to amend their charters with respect to local matters. Judge O'Brien's proposal likewise offers a proper basis of compromise, and it contains the necessary prohibition against special legislation.

Mr. Parsons — Under Mr. Franchot's scheme, this will take back the power of home rule.

Mr. Foley — Once the city adopts a charter, it could never be taken back by the Legislature. Of course the Legislature at any time can affect the regulation of cities by general laws, and there is a safety valve in the passage of general laws. The majority of representatives of our State in the Legislature are elected from cities, and if there was any considerable opposition to a general law affecting all the cities, there would be a sufficient combination of men from the cities to prevent its being passed. So that there is a check in the general law scheme to prevent unnecessary or unfavorable legislation.

Mr. Parsons — Could not a general law be so framed that it would apply to but one city?

Mr. Foley — Well, that general law could be limited. The committee has continued a scheme for classification of cities, but under the act there is no provision for passing laws relating to classes, so that it is entirely unnecessary. I do not understand the provision dividing the cities of the State into classes and yet prohibiting the Legislature from passing any class legislation. Now, Illinois has had a prohibition against special legislation, and it has a General Municipal Corporation Act, and it applies to all the cities of the State. It is extremely short. As has been pointed out, it has been a great advantage to the people of Chicago in working out their own affairs. It has given them almost complete control of local affairs through the local council. They have built up a body of well-trained, responsible councilmen, and they have lifted the Board of Aldermen, as we have known it by reputation, almost to the plane of the federal legislature. England also has a provision for general laws in the municipal corporations act of 1835, which was revised in 1882. Afterwards they provided for the incorporation of all boroughs or municipal governments by general law, and they have done away with special incorporation.

Mr. Low — I think that the difference, Mr. Chairman, between the English situation and our own is this, that the English, having passed the general incorporation act of 1855, left it alone. In

other words, we have set out to accomplish the same thing, but by an entirely different method, and I would like to observe that in that general incorporation act of 1835 London was omitted.

Mr. Foley — Well, Chicago is not omitted from the Illinois constitution and Chicago is getting along better than any city in the State of New York. Now, I have suggested what are the defects of legislative control, and the advantage of the Franchot and O'Brian compromise proposals. Along these general lines the advocates of home rule and legislative control can properly meet. Those proposals profit by the experience and operation of home rule provisions in other States of the Union and do not seek their inspiration in the government of the subjects of the Sultan of Sulu or the uncivilized Moros of our Oriental possessions.

Mr. Parsons — I wish to ask you whether as a matter of fact the government of Chicago was not divided into a great number of boards which the city government could not control, independent boards, established by the State Legislature.

Mr. Foley — I don't think so, but if it was not, it was cured in 1905 by the provisions of the general municipal act. Under the provisions of that law, the people may vote as to whether they shall establish a certain form of government, the same as our third class cities law, and if the government of the city of Chicago was of the nature of which you speak, it was, or could be corrected. But New York has certainly had its dose of special boards, and the Court of Appeals has sustained in almost every instance appointments of special boards by outside authorities; the Rapid Transit Commission and the Court House Commission, they were constituted by an authority other than that of the Mayor or the board of estimate, and I cannot think of the other boards at this time, but there have been many of them created by the State. They exist in other cities, as is shown in Buffalo by the Grade Crossing Commission, where the members were named in the statute.

Mr. Deyo — I would like to ask Delegate Foley if he ever knew of an incident in his legislative experience when a bill was passed by the Legislature, affecting the charter of the city of New York, which did not receive the support of the representatives in the Legislature from the city of New York?

Mr. Foley — Why, certainly. We passed the Public Service Commissions Law.

Mr. Deyo — I have reference to the amendment to the charter.

Mr. Foley — Amendments to the charter? I think there are a number of cases.

Mr. Deyo — I never knew of such a case in my experience.

Mr. Foley — Yes, the Legislature took away the power of granting franchises from the board of aldermen and vested the power in the board of estimate, and there are many more of such amendments.

The Chairman — The delegates will not engage in a desultory conversation. If the delegate from Broome wishes to ask a question he should address the Chair and make his request.

Mr. Deyo — I would like to ask the gentleman to designate the particular law or amendment to which he has reference.

Mr. Foley — Well, it was passed in the 1905 Legislature. You can find it. It was an amendment to the charter to take away from the Board of Aldermen power to grant a franchise and gave it to the board of estimate.

Mr. Chairman, I desire to reserve the right, firstly, to offer amendment to this proposal and secondly, to move when the Committee rise, instead of reporting in favor of this amendment, that it recommend that it be recommitted to the Cities Committee, because I think these discussions will result in some light upon the problem. I am of the opinion that we will follow the experience of the Convention of 1894, when it deliberated for sixteen days on the question of the report of the Cities Committee; and after it deliberated and discussed, it was then recommitted; then another report came out and was recommitted; and I hope this deliberation will result in a fair and satisfactory solution of this home rule question.

Mr. M. J. O'Brien — It is a source of some embarrassment to me to have to differ from the Committee on Cities upon this very vital and important question which means so much, not only to the cities of the State, but in the progress and development of the State itself; and this embarrassment is added to by the consciousness that I have that that committee, headed by the distinguished delegate from New York, long endeavored and intelligently and unselfishly devoted their time to try and find a solution of what I agree with the committee is a difficult subject, and I shall not take up much of the time of this Convention, because you know all the questions that might be discussed are questions upon which we all agree; namely, that there is now in the State a sentiment which has grown to the point that all are concerned in endeavoring to give to the different localities in the State that measure of home rule which will perfect their happiness and their prosperity. And, so we are all seeking the same thing; we are all endeavoring to meet that sentiment which has grown up and, in a constitutional way, if we can, solve it, and put it into shape so that it shall endure for at least twenty years; and it is because of the importance of the question, that, with some experience in the office of the corporation counsel before I was a member of the Court, and

having, of course, to give more or less consideration to these municipal questions, I rise to speak. When we approach the subject we must do it with a knowledge that during the last fifty years the great problems which were presented to the people of this country in all the States were the question of municipal administration. Our cities have grown so that to-day we have in this State more than 70 per cent. of the population living in cities; and, of course, if we are to have progress and development in the State, it must be because the cities containing more than 70 per cent. of our population have permitted that progress and prosperity. Now, in this suggestion which comes from the Cities Committee they had a duty to perform. They had something to do, and my criticism is that they have not done it. They have approached this subject as though there was something to be feared. They have lacked the courage of their convictions, and they have stopped short of giving home rule. Speaking in general, I will examine the Constitution of this State as it stands to-day and contrast it with the report of this Committee on Cities, though, as for me, I would prefer to stand on the Constitution because therein rights are better secured than they are by this proposal, which comes from the Committee on Cities. You have under the plan of classification of cities and with the suspensive veto, to which reference has been made, at least some slight protection; but, if you are going to permit New York, if you are going to give New York a right to adopt a charter, and give to the Legislature the right by special law to destroy it, the right to the Legislature to nullify it before it goes into force and effect; if you are going to leave the whole thing subject under the delegation of power, to nullification, then you have no home rule amendment, and it is to those features of the report that I make the most serious objection. I am not going to spend any time, because the Chairman of the Committee himself has pointed out the number of special laws since the right to make charters, or the right to grant charters, has been given—I am not going to spend much time on the subject of how many special laws have been passed by the Legislature.

The percentage of laws that relate to municipalities in the last ten years, that percentage would run up, if figured out, to at least one-third of all the bills that are passed by our State Legislature, and that shows you the extent to which there has been wrested from the cities the authority and power over their local concerns. Speaking generally with regard to those features of this measure, I say the committee were lacking in courage when they came to the question of granting that power. What does the present measure grant? It speaks about exclusive power, and in its form, you would assume when you read it through, that it does give all

the power that all the cities should have; but that is all whittled away by the subsequent provisions and when you get to the end, the city has been given no power; because, as I have already said, under the plan of special laws and nullification, the whole thing can be destroyed. Now, what the cities need and what they are demanding is the right of local self-government, and in addressing ourselves to that question we need not be so much concerned with the enumeration of the powers of the State and the enumeration of municipal activities. Of course, there are a great many functions belonging to the State; there are a great many of the powers that belong to the State which are carried out through the agency of the municipality; whether that is conferred upon the city because the State desires the city to exercise it as an agent, or it relates to the property of business of the city, exclusive of the Legislature, and subject only to the general laws that are, of course, obligatory upon all, makes no difference. If the Legislature confers it, the right can be exercised. So, I say, with respect to the other question which has been suggested, of course, it would be difficult to enumerate. There was another difficulty which I think lies in the report of this Committee; they seem to have been afraid to have approached the question, because it was difficult to determine what was a State and what was a municipal function, and then they attempted to enumerate. The thing I object to is that they attempt to enumerate in their proposal some of the powers which the city shall exercise; and that was the objection I had to one of the other measures by the distinguished gentleman, Delegate Franchot. In his measure he attempts not only to enumerate some powers, but he has the provision against the exercise by the State of certain powers. Now, in the Federal Constitution, which is a model which we all can follow, when they take up questions of this kind, whether it is under the fourteenth amendment, the due process clause, or whether it is the question of regulating commerce between the States, the interstate commerce laws, they did not attempt to enumerate what constituted interstate commerce, or what represented due process of law, but of course you cannot get away from the question when it is presented. But there are certain broad questions which every one can conceive from the outset are enumerated in the amendments which have been presented here, of State functions and municipal functions, which it is conceded belong, some of them to the State, and some of them to the city, and then there is that middle ground which has been referred to where some of these questions are so involved that it might be difficult to determine whether the State or the city should exercise them. But, I submit there is no difficulty at all, if you give the

power to have it finally determined as to a separation of these relative functions. You will do another thing by approaching the subject in that way. The presumption is that with respect to a private corporation, and a municipality is a private corporation, if you leave it as it is, with an attempt at enumeration, you must remember that in that form you are up against the construction which is given to our Constitution and statutes that it is only the grant of power and not those things which are incident to it, that are granted; whereas, if you give it in the broad language which has been suggested and in the form of the proposed substitute which I intend to present when the opportunity is permitted,—if you put it in that form, then the presumption is reversed, and the city starts with the presumption that its powers relate to its government and to its business and to its affairs, and then give to the State the power so that the Legislature can by general laws restrict the exercise of those activities by the municipality, so that they can be stayed.

Therefore, I have modeled and I am only going to say one word in explanation of the measure which I intend to substitute,—I have tried to point out the fundamental difference and distinction between the measure presented by the Committee and the one which I intend to substitute. And, I simply want to say in conclusion that I am thoroughly in harmony with the Committee in the efforts which they have made to solve this question and with the suggestion that has been made that when we have all this discussion, that the matter may be sent back to the Committee with a view to seeing if all these different proposals can be harmonized. The difference is fundamental. It involves a difference in principle; because if, under that provision, you are never going to permit the city to act or exercise any authority without coming back to the Legislature, you are going to hamper the city; you are going to take away from it the meat of home rule which you have attempted to give it, and you are going to abort the efforts of all the men who have assisted here to accomplish a certain purpose. Now, then, I have no pride of opinion and I want to say in respect to my proposition, the substitute, I think it is due to myself and to the Committee to say this. I took this matter up when the Committee was in session and when they had practically gotten to the point where they were preparing their report. They were very considerate in permitting me to appear and allowing me to present my suggestion. But I realize that I had waited too long, and it is, therefore, with this apology, for not having presented it, because it was my duty to have done it at an earlier stage, so that it might have received consideration. It is with this apology that I now, with some deference will present it, when the opportunity is offered. But,

I want to say that I think, if we proceed upon the theory of only giving to the cities the amount of home rule that is embodied in this proposal, that you are disappointing every advocate of home rule. You will destroy the confidence of those who have been looking to the delegates of this Convention to solve the question, and you will be running counter to a sentiment which has been growing stronger year by year and which must find its realization, if not at the hands of this Convention, then it will find its realization at the hands of the people.

Mr. Wickersham — I move we now take a recess until half-past two.

The Chairman — It is moved that we now take a recess until half-past two. All those in favor of the motion will say Aye, opposed No. The motion is carried, and we will now stand in recess until 2:30 p. m.

(Whereupon at 1:10 p. m. the Committee took a recess until 2:30 o'clock p. m., Friday, August 13, 1915.)

AFTER RECESS—2:30 P. M.

(Mr. Austin in the Chair.)

The Chairman — The Committee will come to order. The business before the Committee is the further consideration of Section 4, General Order No. 50.

Mr. Franchot — Mr. Chairman, and Gentlemen of the Committee. It was with some diffidence that I joined in the minority report upon the Proposed Constitutional Amendment submitted by the Cities Committee, now under consideration, and it is with some further diffidence that I rise to discuss the measure and in support of that dissent. I hope that I may be exonerated from any charge of presumptuousness in holding to certain fundamental conceptions which I think that I have formed during the course of the discussion of this great subject before the Cities Committee. The hearings held by that committee were extremely extensive and served adequately to demonstrate at least one thing, that home rule for cities is a question not only of far-reaching importance to the State and to the cities of the State, but also one attended by great difficulties and intricate necessities for distinctions. Realizing that, and realizing also that I came to the subject lacking a degree of experience in the matter of city government which many other members of the Convention doubtless have —

Mr. Wickersham — Mr. Chairman, I make the point of order

that there is no quorum present. I think that it is very important that addresses on this vital subject should be heard by a quorum of this body and I ask that the roll be called and that the Sergeant-at-Arms be directed to secure a quorum.

The Chairman — The Chair recognizes the fact and determines that there is no quorum present, and will, in accordance with the rule, call the President to the Chair. (The President resumes the Chair.)

Mr. Austin — I desire to report that I have determined that there is no quorum present and the matter is referred to you for your action.

Mr. Wickersham — Mr. President, I move a call of the House.

The President — A call of the House is moved. The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Allen, F. C., Angell, Austin, Bannister, Barnes, Barrett, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Clearwater, Clinton, Cobb, Cullinan, Curran, Dennis, Deyo, Dick, Donnelly, Donovan, Dow, Dunlap, Dunmore, Fancher, Fobes, Foley, Franchot, Green, Haffen, Hale, Heaton, Johnson, Kirby, Landreth, Latson, Law, Leary, Leggett, Lincoln, Linde, Low, McKean, Mandeville, Martin, F., Martin, L. M., Marshall, Mealy, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., Ostrander, Parmenter, Parsons, Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Ryan, Sanders, Sargent, Saxe, M., Schurman, Sears, Sharpe, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Standart, Stimson, Stowell, Tanner, Tuck, Van Ness, Wagner, Weed, Westwood, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, F. L., President.

The President — A quorum of the Convention is present.

Mr. Barnes — Mr. President, I ask unanimous consent to make a motion to amend Bill No. 786, to reprint as indicated and recommit, retaining its place as a Special Order for Monday evening.

The President — Mr. Barnes moves to discharge the Committee of the Whole from further consideration of Constitutional Amendment, Introductory No. 315, Print No. 786, to amend as indicated and recommit to the Committee of the Whole.

Mr. Parsons — May we understand how it is amended?

Mr. Barnes — If the Clerk will read, yes.

The Secretary — Page 1, line 7, strike out the words "for materials furnished" and insert the words "In pursuance of a judgment or for property". Page 1, line 10, strike out the word "minimum".

The President — All in favor of the motion will say Aye, contrary, No. The motion is agreed to. What is the pleasure of the Convention?

Mr. Wickersham — I move that the Convention now reassemble in Committee of the Whole and continue the consideration of the present order of the day.

The President — The Convention will again go into Committee of the Whole. Mr. Austin will resume the Chair.

Mr. Franchot — Mr. Chairman, I should be very glad to yield the floor until we can discuss a matter affecting the question now at issue.

The Chairman — Section 4 is before the House? Any further discussion of Section 4?

Mr. Wickersham — Mr. Chairman, I move the adoption of Section 4 if there is no further discussion. We are on the consideration of that section now.

Mr. Low — Mr. Chairman, I think Mr. Franchot wants to be heard upon it.

Mr. Franchot — Mr. Chairman, I have something I want to say before that motion is put.

The Chairman — We would be very glad to hear you if you wish to go on.

Mr. Franchot — Mr. Chairman and gentlemen of the Committee: I presume that under the rule of parliamentary procedure, the inability of any member to suggest a substitute proposal — I presume that the discussion is restricted purely to attack upon the measure which is now before the House. That situation is a matter of regret to me for the reason that it puts me in the very uncomfortable position of being merely destructive of the efforts of others rather than suggestive of a constructive solution of the problem upon my part. Before I address myself to that criticism I wish to make a few remarks in favor of the principle upon which the proposal of the majority of the Cities Committee is based, namely, an election upon the part of the members of that committee to adopt the better of two alternatives which are presented as possible methods of solution of the problem of home rule. The wide-spread demand for the grant of larger powers to cities can be met in two ways and at the outset of any discussion of how it is to be met we must choose between them. Firstly, you can authorize or, if you please, mandate the Legislature to grant to cities home rule powers, or you can make to cities, in and by the terms of the Constitution itself, a direct grant of such powers. The proposal of the committee in electing to adopt that latter alternative has my hearty support. It has also my support in the breadth of the grant included within the initial sentences of Section 4. My quarrel with the bill is as to the substance and

method of phraseology of the subsequent limitations upon that grant which the bill contains. Now there is a grant made of the power to amend the charters. At the outset, let me say, that such a grant is a necessary integral part of any effective vesting in the cities of power to regulate, manage and control their own affairs. Since this Convention convened I have heard many statements from members of the Convention deprecating the suggestion that there should ever be conferred upon a city a right to change its charter or to go farther and adopt a new charter embodying only such provisions of the old as the locality itself should decide. In some subtle, recondite way the granting of such powers to cities has been conceived by members of this Convention, according to their talk, as in some way derogating from the sovereignty of the State. Now this would be true if it were not for the fact that the paramount authority of the State to be exercised in a proper way, namely, by the exercise of general laws, is to be retained. It is apparent that without a grant of power to change and modify the machinery of government, the grant of a power is wholly nugatory. Governmental power without the machinery to put it into exercise is nil. It is with respect to charters that the present evils which have given rise to the widespread demand for home rule have arisen. The burdening of the Legislature with matters of local concern which should not and do not interest the State, has been with respect to charter changes, or the changes of special laws which form part of the system of government of the cities. The avoidance of responsibility of which complaint is made, by local officials has been brought about by their assertion, justified or not, that they are precluded from a proper performance of the functions of city government by obstructions and restrictions in *charters*. The delay and consequent inefficiency in city government which lies partially at the basis of the demand for home rule has been delay in securing *charter* changes. I think that it is apparent that there must be, if a constitutional grant is made of home rule powers, the power also to change and modify charters. That brings us also to this conclusion that a given measure such as that which the Cities Committee has put forth must be tested, not by the general language of its grant of home rule powers, but it must be tested from the point of view of how far it grants the right to change and modify charters.

Now early in the discussion in the Cities Committee, or not so early, but in the middle of it, I personally came to the conclusion that the proper method of meeting the demand existent in the cities of this State for home rule was by a direct Constitutional grant, a separation of the powers of government at present exercised in cities into two groups—and that is what it must

mean — namely, those powers which are to be exercised by the locality itself and those powers which are reserved to the State at large for exercise. I came to that conclusion, however, only with this qualification, that such a grant must be made with precision; that the definition of the line between the local source of administrative power and the State source of administrative power, should be, so far as possible, drawn, and drawn in language so clear and explicit that we could avoid, as much as possible, doubt as to the validity of official actions in cities. The necessity for this clearness of definition seems to me to be apparent because official action in cities, like anywhere else, depends for its efficient exercise upon the degree to which its validity is free from doubt. Such official action is bound to affect property rights, bound to affect rights of personal liberty, and is bound in numerous instances to create financial responsibility on the part of the city. Therefore, any questions which are open to be raised, we can rely upon it, will inevitably be raised. We should not, in making a grant direct to cities of powers of government, throw the exercise of all governmental power into confusion, doubt and uncertainty, because, if that doubt, confusion and uncertainty be great and it is not overborne by a commensurate benefit derived from a real, genuine grant of home rule powers, the cities of the State will be worse off in spite of home rule than they are under the present system of city government. Personally, I have a conviction that a direct grant to cities of that nature can be made without involving that doubt, uncertainty and confusion of which I have spoken. My chief quarrel with the proposal now before this Committee of the Whole is that it does not make the grant in precise and definite language. I realize that as a practical matter such a grant cannot be made without a certain degree of uncertainty, a certain degree of necessity for the interpretation of the language of the grant by the courts. But my contention has been throughout, and I make the contention here, that it is perfectly possible by giving attention to the subject, by dealing with it in its concrete aspects, to define the place for — the place to which is to be assigned the doubtful powers, the powers that lie between those two classes of powers as to which there can be no doubt that they are reserved to the State or granted to the city, as the case may be. Now, that is my first objection to the proposal and my second is that in addition to involving the subject in obscurity, the proposal of the Committee cannot possibly be construed to have given to cities such measure of home rule that the benefit thereof will outweigh the indefiniteness and uncertainty of the grant. The experience of other States dealing with direct grants of home rule powers

to cities demonstrates that the doubtful powers, the border-line cases, are few in number as compared with the great mass of powers which are granted and powers which are reserved. An examination of conflicting decisions in different States of the Union reveals that it would be possible for the Cities Committee of this Convention, if it could bring itself to undertake the task, to find out those questions which inevitably must arise in construing the grant, in determining where the dividing line lies, and in simple, direct and above all brief language, defining the grant by a specific assignment of a given power to one jurisdiction or the other.

The Committee on Cities, to a certain limited degree, acted upon that principle. You will find in their proposal in subdivision *a* the definition, for instance, of the doubtful question of whether police officers and employees are city officers and employees, or officers of the State as distinguished from the city. You will find a definition of the local health officers as being included within the local jurisdiction. That is, to my mind, the sole attempt made in the Committee's proposal to define "property, business and local affairs," unless we can point to the fact for purposes of definition that the phraseology of the present Constitution, "property, affairs and government" has been subdivided and there has been granted to cities the very much lesser of the two parts into which it has been divided. Now, along the lines of precision, my further quarrel with this proposal is that in addition to utterly failing to define their grant, they have thrown additional elements of doubt and confusion around the validity of official acts. In granting the power to amend charters to the local authorities of the city, the committee recognized that, however it may be in the city of New York, certainly in the cities of up the State it would be preposterous to confer upon the common council of the city absolute control over the organization of the government. To permit the common council of the city to amend the charter at will, or, if you please, subject only to the nullification of the Legislature would be *eo instanti* to transfer fundamental charter provisions into mere ordinances, changeable at will. To do that would be equivalent to our providing as a final section of this Constitution the following: "The Legislature may at any time amend this Constitution," because the charter of a city occupies an analogous position, it seems to me, in relation to the city, as the Constitution of the State at large occupies with respect to the State. Now, realizing the necessity of hedging around with restrictions and safeguards the exercise of the power of amendment by the local bodies,—and let me say incidentally that this attempted grant is the first one upon record,

to my knowledge, which adopts that method for amendment of charters. There has not been a single attempt throughout the Union to grant home rule powers to any city which shall not first have elected to become a home rule city by the general amendment of its charter by a charter commission, subject to the approval of the people, and doubtless for the same reason as the Cities Committee encountererel in endeavoring to confer upon local legislative bodies control over charter provisions, without prior change of the charter, simplification of the charter by the adoption of a new one prepared by a charter commission. The result was that the Committee found itself under the necessity of making a distinction between two kinds of charter change. They wanted the local legislative body to have control of minor details, the matters which did not affect the fundamental system under which local administration had been carried on. And they thought that they could make the division, another division, bear in mind, between amendments to the charter which were less important and those which were of more importance, by the adoption of another vague, indefinite, insubstantial phrase, namely, "framework of the city government". They permit, under Section 4, amendments to the city charter with respect to matters included within subdivision *a*, which do not "change the framework of the government." Now, the principle which I feel most strongly with respect to this whole question, namely, the necessity of precision and definiteness in grant, is absolutely disregarded in throwing this further element of doubt and confusion around the exercise of administrative powers. Framework of the government! Who is to say what is the framework of the government? And when you come to concrete instances, how is the city going to act? Framework of the government might mean to one mind one thing, and to another, another. But it will be up to the authorities of the city and their legal counsel to come to some definite conclusion and go ahead and act, and act in a way which will be subject to question, act in a way which will be disastrous from the point of view of efficiency, if the guess which they made is not correct. Now it may be argued that it will be a very simple matter to define what framework of government means by one or two judicial decisions. But bear in mind that what is framework of government in one city is not necessarily framework of government in another city, so that the corporation counsel of the city of Binghamton will not be able to rely upon a decision made in the courts of the city of New York with respect to New York city's charter. Those of this committee who are lawyers are doubtless familiar with the fact that courts are not ordinarily desirous of deciding fundamental principles unless such decision is necessary in order to

make a proper disposition of the concrete point of law which is before them, and we would have an immense number of segregated, uncoördinated, irreconcilable decisions by the courts as to whether or not a particular amendment to particular charters constituted changes in the framework of the government or not.

Now, it may be answered that in view of this doubt and confusion, in view of the utter inability of the ordinary city corporation counsel to resolve this doubt and confusion, it will result in everything being submitted to the Legislature for nullification. Quite likely that will be true. But if that be so, then the exclusive nature, so called, of the grant of power is not only modified and made partial, but it is completely destroyed in practice, so that there is no grant to any city of exclusive power to manage, regulate and control anything. Those are the two horns of the dilemma upon which, it seems to me, the Cities Committee are impaled — on one or the other of which they are impaled. Now, if this nullification scheme — before I pass to the question of the nullification scheme, let us see where the remarks that I have just made lead us. It might be contended that the up-shot of my argument is this: That it is impossible to grant to cities power to amend their charters *seriatim*, power to adopt particular amendments to their charters; that in my argument I have, in so far as it has any force at all, I have shown that it is impossible to grant home rule to cities by direct constitutional enactment. My answer to that is, not at all. That problem has been solved in other States. If we will only be confined to the experience of other States, if we will only examine the practical results which have followed from the methods adopted by other States, the way is pointed out and the way is easy.

Every single one of the twelve States in the Union who have heretofore adopted, heretofore made direct grants of power to amend charters to cities, a direct grant of power of local self-government, has granted such powers only to cities which should in the future elect to be home rule cities; to cities who have first adopted a new charter for the government of the city, for the administration of its property, business, and local affairs. In other words, in attempting to divide between those things in existing legislative charters which are fundamental and should not be subject to change by local legislative bodies and those which should be so subject, in other States the thing has been worked out in this way, that the city has a charter commission which then and there during its deliberations made a specific division between those things which in the future shall be permitted to amendment by the local authorities and those things which are considered so fundamental that they may not be changed without

the consent of the electorate of the city. In other words, the granting of home rule in other States has resulted in a more scientific charter drafting, just as it is my conviction it would result, for instance in the city of New York, if this power be granted to such cities as shall elect to adopt new charters. It will result in a segregation of those things which are fundamental in New York city in the New York city charter, and those things which have the accumulation of 250 years of evolution, a segregation of them from the great mass of complicated, mutually inconsistent details which are embodied in these 10,000 special acts, in addition to the charter to which the distinguished chairman of the Cities Committee has alluded. I say that the only scientific way to grant home rule to cities by direct constitutional grant, is by making the grant conditional upon the city having elected to adopt a charter of its own. I personally have confidence that there can be found in the urban communities of this State, men who will consent to serve on charter commissions, who will possess enough good sense, enough integrity and earnestness of purpose, to improve the framework of the city's government, as a charter commission. I may have too much faith in the character of our city citizenship, but I don't think so. And I say if your confidence does not go as far as mine, the experiment would not be very expensive to try and find out if there does not exist in any community such a degree of intelligence and integrity. Now it seems to me that the cities of this State have amply demonstrated their ability to regulate their own government as to matters of local concern without check or authority of the Legislature — that is to say, check or authority of the Legislature exercised by specific surveillance over their individual acts. The nullification provision in the Committee's proposal, why was it adopted? Let us examine into the fundamental motive, the underlying idea for this complicated scheme. It was adopted, clearly could not be adopted for any other purpose, than to protect the sovereignty of the State, to preserve the paramount authority of the State over matters of purely local concern. That was the motive and my disagreement with the majority of the Committee is based upon two propositions. I mean with regard to nullification.

First, it is not necessary to preserve the right in the Legislature to nullify certain specific acts; and, secondly, even if some additional control of that nature were necessary, the nullification procedure will not accomplish the end in view. Now, addressing myself to the first of these propositions — the question of the necessity of a nullification proceeding: It will be observed that in the Committee's proposal the so-called exclusive grant is made subject to the Constitution and to the general laws of the State

applying to all the inhabitants or to all the cities or counties of the State without classification or distinction. There is therefore reserved to the Legislature full power to regulate matters which ordinarily are matters of local concern, provided only — and this is the sole condition — that the regulation by the Legislature shall be equally applicable to all cities of the State. Now it is possible, if we do not view the matter in the light of experience in other States, to conceive that the reservation of the authority in the Legislature to enact laws of that description with respect to anything under heavens that the city may do is not a substantial reservation of power; but if we view it in the light of experience, that power reserved to the Legislature in that regard is ample, wholly adequate to the protection of the paramount authority or sovereignty of the State, the protection of which seems to every member of this Convention and every member of the Cities Committee to be essential.

In other words, a grant of home rule powers does not require or imply a divorce of the cities from the State; the erection of self-governing, independent, wholly independent corporations. Not at all. If you reserve to the State the right to enact general laws you practically reserve to the State, to the Legislature of the State, the power completely to wipe out and nullify the grant of home-rule power which the Constitution makes, provided it wipes it out and nullifies with respect to all the cities of the State. What has been the experience in other States? That method of granting home rule was adopted in the State of Michigan. There was reserved in the Legislature the right to enact general laws, general laws applying to all home rule cities. The practical effect was that the Legislature enacted a general law, No. 279 of the public acts of Michigan of 1909, in which it undertook, the Legislature of Michigan undertook, to and did define the extent and the nature of the constitutional grant to cities. It enacted a law which said in three main divisions, no home rule city shall embody in its charter such and such things. Secondly, all home rule charters must embody such and such things,— and then laid down a series of other things which the city might or might not at its election embody in its charter. Is it not amply clear, is it not obvious, doesn't it jump to the view that by the reserving of the right to enact general laws, you give to the Legislature absolute power of nullification over any attempted exercise of power by cities on matters and in a manner contrary to State policies. Now it is only when matters of local concern impinge upon and tend to become contradictory to the interest of the State concerning a matter of State-wide importance that it is necessary for the State to step in. Practical experience has demonstrated that it is not

necessary to reserve this power of nullification of particular acts of the Legislature, and, secondly, even if some further power than that to enact general laws were required, the particular scheme which the Committee has adopted will not accomplish that purpose, in my humble judgment.

Let us take concretely what will happen: A city elects to exercise certain powers in a certain way and adopts an amendment to its charter for that purpose and sends it to Albany. Under what circumstances will that receive attention in Albany? Under what circumstances will it be brought about that a resolution will be introduced for nullification? I say only in the case where there is a difference of public opinion in the particular locality which is attempting to do the act, and there only. Nullification, you say, will protect State concerns, State interests? Not at all. These particular amendments will go through flying without any action by the Legislature until you get to something of a controversial nature in the community itself. One of the great evils of which the advocates of home rule complain is the settlement of distinctly city questions away from home, the removal of the scene of action, the change of venue on the dispute, to Albany. Now, disputes at Albany have occurred in the past, in the last twenty years, as I understand it, only on questions which are controversial in the particular community, and will they not continue to occur? Can we not realize clearly that any broad constructive change attempted thus in city government will arouse opposition, will make a controversy, will present an issue, and the ultimate determination of that issue will be at Albany, as it is now, and that great evil which we are attempting to remedy will not have been remedied to any extent at all? Another of the great evils which we are trying to remedy is the delay in the grant of power, delay in the adoption of machinery of government. Is delay obviated in any respect by this nullification scheme? Not at all. In a great number of instances delay will be increased in noncontroversial matters. It has been the habit of cities in the legislative session to come up to Albany immediately if the need for change in the charter has arisen, and to get it. Now they have to wait until the first week in January of the succeeding year and they do not get it until sixty days have expired after that week, so that the great evil of delay in the change of governmental machinery to meet new needs of the community, and consequent inefficiency in the affairs of the city, will continue under this nullification scheme. Partisan questions, the disposition of questions of city government, which should be determined upon their merits, but in the past have been determined from the point of view of partisan considerations will continue to be so determined. If the government of the city of New

York happens to be Democratic and the Legislature at Albany happens to be Republican, who shall say that the question of nullifying or not nullifying will be decided aside from such partisan considerations. If the local city government up state in a Republican city wants to make a record for efficient administration of city affairs and wishes to have a change in its method to do it and finds a Democratic Legislature at Albany, won't that affect the question in the future, just as it has in the past? Therefore, I say, in addition to enshrouding this whole question of the administration of city affairs in doubt, confusion and uncertainty, we have to weigh over against that the very doubtful advantage of an exceedingly restricted grant of home rule,—in practice a grant practically of no home rule — and the cities will be worse off than they were before. Therefore, under this particular measure, considering this particular method of granting home rule to cities, I am forced to disagree. Now, the most important phase of this provision of home rule is, how we are going to grant home rule to the city of New York. As I have stated heretofore in the deliberations of this body, the question of home rule for the city of New York is correlative to and closely bound up with the question of the deprivation of the city of New York of that portion of representation at Albany which its population would ordinarily demand, and I stand upon what I said at that time, that while withholding from that particular locality the power to dominate in State concerns, I am in favor of granting to it a maximum safe and practical degree of management over those things which are purely of its own local concern. It is because in my judgment the proposal of the majority of the committee does not do that, and because it forces upon the cities of the State, the other cities of the State, a system of government which they may not desire to accept, that I am opposed to this home rule measure. Now I realize that I am criticizing the result of a compromise. My criticism of it is not that it is a compromise, but that it is a compromise on the wrong basis, in my humble judgment. I think a way of compromise is fully open to the members of this Convention. I think that it would be perfectly feasible to compromise between the position taken by Mr. R. B. Smith, that the whole matter should be left to the Legislature, and the position taken by those who are in favor of a direct constitutional grant of home rule, a compromise by the way which to a certain limited and wholly insufficient degree, in my judgment, Mr. R. B. Smith has himself come in the last amendment to his proposal.

Mr. Marshall — What is the number of that?

Mr. Franchot — The number of Mr. Smith's proposal — the last printed number is 797. Mr. Smith has had as much difficulty

in arriving at a final opinion on this subject as any of us. I have a proposal before this body in its final form, amended only once, and that is because I waited until the last moment. Mr. Smith has been doing it ever since the original introduction of the amendment. I do not allude to this measure, Mr. Smith, in order to support it. (Laughter.) I am against it; but against it, only because it doesn't go far enough. I am in favor of the method of compromising this question; of compromising between the extreme desires of those who wish a direct grant of home rule to all cities, a forcing of all cities to accept that grant and go under it whether they wish or not, and those who consider that if we leave it to the Legislature, the Legislature will do all that is called for under the circumstances. I had the opportunity as a member of the Cities Committee to listen to the eloquence of Mr. R. B. Smith. His earnest — and did I say privilege? Well it was a privilege, because the earnestness of his belief was shadowed forth in the forcefulness of his language. He said that he had no doubt whatever that the only thing we needed to do was to authorize the Legislature to grant home rule and the Legislature would grant it, and his first proposal merely did that, said that the Legislature might delegate any of its legislative powers to cities; and finding, I suppose, that there was somewhat less confidence among the members of that Committee in the good intentions and strong desire of the Legislature to divest itself of power and control over city matters, he now proposes that it may be empowered, and couples with it a direct grant to cities of exclusive power, to fix the number and compensation during service of officers and employees of the city and of any county situated wholly within the city. Now, Mr. Smith and I have come close together in method, because if you will refer to the amended proposal which I originally introduced to the Cities Committee, which is now number 796, on the general file here, you will find that there I make a direct grant to cities or provide for a direct grant to cities of the home rule power to such cities as elect to adopt charters for their own government. Every other city may remain in *statu quo*, if it so desires under the provisions of the suspensive veto provision, which I think Mr. Low's remarks this morning amply demonstrated was a sufficient protection against interference in city affairs against the will of the community, but goes nowhere whatever in giving to the cities the power of initiation of new rules and methods with which to go ahead and develop their government. Now in addition to that grant to cities which elect to exercise it — and only to such cities — the sacred precincts of Watertown need not be profaned with this home rule. The paragon charter of that city may remain undisturbed, and any of the other cities of the State can continue

under their present charter and the present method of government until such time as they find that they do not secure from the Legislature that measure of home rule to which they think they are entitled.

Mr. Parsons — If you leave it to the Legislature to grant home rule you authorize it to delegate its power. Then does not the power still exist in the Legislature to take away the home rule at any time?

Mr. Franchot — It certainly does.

Mr. Parsons — Then the Legislature can interfere at any moment?

Mr. Franchot — It cannot unqualifiedly interfere if at the same time you prohibit it from the enactment of special city laws, but if you don't it can take back — it can be an Indian giver.

Mr. Marshall — It can resume its authority.

Mr. Franchot — Yes; it can resume its authority, Mr. Marshall, and therefore, legislative home rule is in the last analysis not a right. It is not a right, even if the Constitution contained a mandatory provision that the Legislature shall grant to cities a full measure of home rule, because the Legislature might elect to ostensibly follow that mandate and yet in effect deny to cities home rule; in direct analogy to the way the Legislature treated the provision against gambling, embodied in the Constitution of 1894 in this State. The Constitution said: "there shall be no further gambling in this State, and the Legislature shall enact laws to carry this provision into effect," and the Legislature immediately proceeded to enact a law which legalized gambling under certain conditions. So that, if you leave the whole matter to the Legislature, it is still a matter of legislative grace, and not a matter of local community right; and that is the reason why I am in favor of granting to cities the right to take unto themselves home rule under certain restrictions which protect the paramount authority of the State. In other words, I would divide the cities of the State into two classes, those which have elected to become home rule cities, and those which have elected to remain legislative authority cities. Now that is a compromise. If a particular local community does not want home rule it does not have to take it. It seems to me that that is a better method of compromise of this question if we have to compromise between conflicting sentiment in this body, than to attempt to straddle the question by starting out in a proposal with a large, inclusive, broad grant, and immediately proceed to take it back. In other words —

Mr. Marshall — Merely for information. You interpret the measure which is now before us for consideration as requiring all

cities to exercise the powers which are referred to in Section 4? Is it compulsory that a city shall exercise those powers?

Mr. Franchot — It is compulsory, Mr. Marshall, to this extent: It is as a practical matter compulsory because otherwise the city will be unable to get any amendment to its charter at all.

Mr. Marshall — Assuming the general election is held as provided in section 4, on the question as to whether or not there shall be a commission to revise the charter of cities and the electors vote adversely on that proposition, what would be the effect of such a vote?

Mr. Franchot — Then the only method of amendment left for eight years would be by the enactment of amendment ordinances by the local legislative body, its submission required by the peculiar nature of the language to the Legislature for nullification, and if it did not nullify then the change would be adopted. But that would be the only method by which a city could get a change in its charter.

Mr. Marshall — Would not the provision of section 3, which was inserted in the Constitution of 1894, permit the Legislature to enact amendments which would be subject to veto by the city? I am merely asking this for information, so as to know what the operation of this provision would be if any locality in the State should practically elect not to come in under this provision, by refusing to elect a charter revision commission.

Mr. Franchot — Of course it would be perfectly possible for the city to attempt to get the Legislature to enact a law under this suspensive veto provision, claiming that the Legislature has power, just as it has now, to enact laws relating to the government of cities. That is, they will go to the Legislature and say, this is an all-inclusive term — “government” — you can apply it to the administration of affairs in cities, therefore you have power to enact a special law. They might say that, but they would be met on the threshold of the legislative committee with the provisions on page 3, here italicised, provisions that they could get such a special law only if that law was not within the power granted to cities by this article.

Mr. Marshall — I recognize the distinction in Section 3 between laws relating to property and laws relating to the affairs of government of cities. As to property and affairs of cities, they are practically dealt with in Section 4. As to government of cities, that is supposed to be dealt with by Section 3. What troubles me is, in the proposition you have been arguing as to whether or not there is anything in the provision which makes it elective so far as the municipality is concerned, or any particular city is concerned, to come in or remain out of this plan of home rule.

Mr. Franchot — I think I can correctly say that it was not the intention of the Committee on Cities that there should be any such election. It was the expectation of the members of the Committee that there was some tangible distinction between the government of cities and the local affairs of cities, and that, in so far as local affairs were concerned, the Legislature could do nothing except exercise the right of nullification upon such changes in the charter, with reference to such local affairs, as change the framework of the government; so that there are not two alternatives left to any city here, except in so far as the local authorities of the city may attempt to get a construction one way or the other of this so-called distinction between the government of cities and of property, business and local affairs of cities.

Mr. Parsons — Does not the government include management, regulation and control of property, business and local affairs?

Mr. Franchot — Well, I believe that it is coterminous with it, really, or should be.

Mr. Marshall — That is not the way I read the statute.

Mr. Franchot — It certainly does include it, but if you give it that language you find —

Mr. Parsons — What is referred to in section 3 on page 3, line 3, laws relating to the government after you have subtracted this which relates to powers to regulate and manage and control its own property and business affairs?

Mr. Franchot — That brings me to another element of doubt and confusion in this.

Mr. Parsons — Then does not that confine the laws in section 3 referred to on line 3, page 3, to laws affecting the government of cities so far as they are agencies of the State in the carrying out of the State business?

Mr. Franchot — I am inclined to believe that the first part of your statement is correct, but the second qualifying phrase should not have been inserted in your sentence, I think; that is my guess about it, and it is impossible for any member of this Convention to do more than to surmise, to figure it out as best he may; he will never know what he is doing; he will be acting in the dark, jumping at conclusions as to what he is doing. My guess would be that the courts will take refuge in the well-established distinction that refers to those powers which the city exercises in governmental capacity and those which it exercises in its private corporate capacity. That would be the easiest way out and the most natural assumption for the court to make, because there is embodied in our case law at this time that distinction which has been clearly made. I had a quotation from the case of *Lloyd v. The City of New York*, but

it is not necessary for the benefit of the lawyers of this Convention to call attention to the extreme narrowness of the field in which cities of this State have been held to be exercising powers in their corporate or private capacities. It has been held that they are not exercising governmental functions only when they derive some particular emolument as cities, as corporations, from the exercise of the particular power under consideration, and it is my contention that the courts, in order to solve something which is otherwise unsolvable, namely, the difference between "government" and "local affairs," will adopt that old distinction between action in governmental capacity and action in private or corporate capacity; and the result, therefore, of the particular method which the Cities Committee has adopted to preserve the suspensive veto will be the enormous narrowing of the field of "local affairs." There are set opposite each other two things; first, government; next local affairs. Can't you see that that will necessarily result in an enormous narrowing of the field of local affairs?

Mr. Parsons — Do not the words "local affairs" broaden the power instead of narrowing it, and indicate that that power is greater than its mere power as a corporation? If it merely said "property and business", might it not come within the definition which you gave to-day, but when it says "local affairs", does it not give a broader definition?

Mr. Franchot — I believe, as apparently you believe, Mr. Parsons, that it is utterly impossible to distinguish between the local affairs of a city and its government.

Mr. Marshall — Yet there is an intention to make distinction?

The Chairman — If the delegates wish to make remarks, they will please rise in their seats and address the Chair.

Mr. Marshall — I was following the precedent which was recently established during the reign of another chairman who did not resort to parliamentary methods.

The Chairman — The Chair has no intention of being harsh in its rulings, but it must insist that the regular rules of procedure be followed, and the delegates who wish to ask questions or make remarks for the Record will please rise in their seats and address the Chair.

Mr. Franchot — Now, in answer to the question of Mr. Marshall, which I was glad to have you put, although not in parliamentary form, it seems to me that there is an attempt to make distinction where none exists, and that it will result in nonplussing the courts, and it still further adds to the elements of doubt, confusion and uncertainty, in which the grant of home rule powers to cities is enshrouded in this proposal; and, still

further, it seems to me it justifies any member of that committee in dissenting from what the majority agreed upon as a compromise. I feel, so strongly the necessity of meeting what is admitted to be the large demand for the grant of larger powers to cities; I am so thoroughly convinced that the only method by which existing evils complained of can be obviated is by such a broad grant of power; I feel so strongly the justice of the claim of the great city of New York that, being deprived of commensurate control in State affairs, it therefore should be conceded a large measure of control over local affairs, that I would be intellectually unfaithful to myself if I could lend any support to this particular proposal now advanced by the Committee on Cities.

Mr. Wickersham — For the purpose of removing one criticism that has been made to a part of this section, I move to amend section 4, now under consideration, by striking out on page 6, line 12, the words "framework of its" and inserting in lieu thereof the words "the numbers, power or method of selection or removal of the elected officers of the city", so that that will read: "and which does not change the numbers, power or method of selection or removal of the elected officers of the city government".

The Chairman — Will you be good enough to send the amendment to the desk?

The Secretary — By Mr. Wickersham: On page 6, line 12, strike out the words "framework of its" and insert in lieu thereof the words "the members, power or method of selection or removal of the elected officers of the city".

Mr. J. L. O'Brian — Mr. Chairman, I was one of the members of this Convention who introduced a measure of home rule which has since been termed by everybody else "too radical". I was the member of the Cities Committee and of the subcommittee to frame this proposed amendment, and I signed the majority report. I feel that if I can explain to this Convention the difficulties that the committee, including myself, sought to remove in framing this proposal, we will all perhaps get a clearer idea of the proposition, and it may be that we can improve it. The demands which were made of the Cities Committee were three, and the demand for home rule, which is sometimes very vaguely expressed, reduces itself to three demands: First, that the Legislature be prevented from interfering with the private and local affairs of cities; second, that cities themselves be given the power of making their own charters, so far as their own private or local affairs and business are concerned; and, third, that we pass some amendment which will reverse the present rule of strict construction. As the corporation counsel from Syracuse put it, every time that that city desired to commence a new undertaking he looked

through the city charter and he looked through the Constitution and he looked through the general laws, and if he found no specific authority in any of those three documents, then he knew that the city could not perform that necessary undertaking, but must go to the Legislature of the State. The demand is that this rule of strict construction be reversed.

I am in support of the proposition before the House because I honestly believe that it does meet all three of those demands. It does not grant so sweeping a measure of home rule as I myself asked for; it does not permit a city to free itself entirely from State control, but it does grant to cities, as I think I can point out to you, a practically exclusive grant in a field of local control where now and where in the past the chief pinch has come on cities. It does reverse the rule of technical construction, and it does, in my opinion, effectively prevent interference by the Legislature in local affairs. I am not one of those who would advocate a proposal with such zeal that he would be blind to its faults, and I shall be perfectly frank in pointing out to you the two matters in this proposal which I think, it may frankly be said, create some doubt as to the extent of the power. I am going to do that, first, because those defects are there, if they are defects; and, secondly, in the hope that this Convention, by putting its mind upon those two propositions, may improve the proposal of the Committee on Cities. No member of the majority of that committee believes that this is a perfect document, but I think every member of the majority believes that it is an adequate and satisfactory reply to the demands of the cities of this State for home rule. And I think I can demonstrate to you now that this grant, and the form of this grant, is in the nature of a direct evolution from previous conditions governing charter-making in this State, and that there is nothing revolutionary in it. There are many fallacies urged on the subject of home rule. One man would have you believe that all cities should be governed alike. That is not only in itself an absurd idea, but that has never been the rule in the State of New York. The cities that have come the nearest to that category have been cities of the second class, under their admirable so-called uniform charters; and yet, no two cities of the second class are governed exactly alike because every one of those cities has come to the Legislature and had certain exceptions made in its favor from the control of the original uniform charter for cities of the second class. The other chief fallacy is the idea that plainly exists in the minds of many people and in the minds of some members of this Convention, that the Legislature itself makes charters. The Legislature grants charters, but so far as I am aware, the Legislature never framed a charter for a city.

The framing of charters has always been done, in the first instance, at home, either by some group of individuals who got together or by some local commission or by the corporation counsel. I think if you could see, those of you who have not been members of the Legislature, how charters are framed and passed upon, you would have very much less fear and doubt about the proposal now before you. I had the good fortune in earlier and happier days to be a member of the Legislature and to sit for three years on the Committee on Cities of the Assembly and during that time I — save the mark! — helped grant ten cities in this State their charters. Those charters consisted of large packages of wood pulp, which were brought down here by the local member; he was asked if it was satisfactory to every one; if he said that it was satisfactory, the Chairman of the Committee would usually read the charter to make sure there was no dynamite in it and then the committee would pass it. If the charter or an amendment to a charter was introduced by some unpleasant individual who did not get along with everybody, why, that charter or that amendment so much desired by the people at home, sometimes would not get far.

Mr. F. Martin — Is that true of the Gaynor charter, where Mayor Gaynor prepared a charter which was satisfactory to all of the people of the city and which he tried to pass through the Legislature of this State?

Mr. J. L. O'Brien — Mr. Chairman, I am speaking of my personal experience in the Legislature; that was not during my time, sir. My point is this, that charters have always been framed in the localities. They have always been brought down here to the Legislature, and, with some amendment on the part of some interested person in the Legislature, the general run of events has been to have the charter passed. There is nothing revolutionary in the idea of an amendment to a charter being prepared at home and being brought down to the Legislature to be nullified, and there is nothing foolish nor absurd in that idea. The evils that have surrounded the present system have been so adequately set forth by Senator Foley, by Mr. Franchot and by Mr. Justice O'Brien, that it is unnecessary for me to go into them. The only question we have before us in how to meet these demands and how to take care of cities in a manner which will conform to our ideas of preserving the sovereignty of the State. The proposed grant which you have before you endeavors to accomplish that result. There are, broadly speaking, three ways in which you may accomplish that result of granting home rule. One, as alluded to by Mr. Franchot, is to simply empower the Legislature to grant to cities the home rule in such measure as

they may see fit. That can scarcely be said to be a constitutional grant of home rule, and, in my opinion, that does not answer the demand that is made, and properly made, by cities. Another method would be to grant cities outright a certain amount of control, without any reference to legislative control; that is equally objectionable to many people because, as it has been argued over and over again, that might enable cities to become provinces within the State. How, then, can we make the grant, giving the city power over its local affairs of business, protecting it from interference in that field, and at the same time reserving to the Legislature the right to protect the sovereignty of the State. This measure has been called a compromise. It is a compromise in so far as it is neither one extreme nor the other. But it is a perfectly sound working principle which will operate and which I believe will accomplish the result. If you grant to a city the right to make its charter and provide that that charter shall then be submitted to the Legislature for such approval or disapproval as the Legislature sees fit, you are giving to cities nothing but what they have to-day, because that is the situation to-day. If, on the other hand, you give exclusively to cities the right to initiate charter legislation, subject in certain particulars to no restrictions except the general laws of the State, subject in other particulars to nullification, on the part of the Legislature, I think you provide an adequate working theory on which your plan will operate.

In doing this, there are manifest difficulties in the way, and the first and chief difficulty is this: How are you going to define the field of affairs which shall be exclusively within the control of the city, subject to general laws of the State? How are you going to define the field which shall be left to the State? That is the problem that underlies every single one of the amendments which has been introduced in this Convention, except those amendments which propose to authorize the Legislature to delegate these powers, and which I do not consider to be home rule proposals. The measure under consideration seeks to make that distinction, and you will see from the debate which has already taken place how very difficult it is to meet the views of all concerned. For example, Senator Foley said this morning that the method adopted by Mr. Franchot, the enumeration of powers — enumerating those that are in the city and those that are in the State — was satisfactory to him. Justice O'Brien says that the vice of the present bill is that it seeks to enumerate certain functions. He would make a simple grant of home rule, leaving those matters to the State which are of concern to the State, and those matters to the city which are of concern to the city. From

that viewpoint this is an ideal method of granting home rule,—if you are prepared to say that you will leave to the courts the determination of every question which will rise on such a grant of power, and if you are prepared to say that municipalities of the State shall have absolute and unhampered control over certain local affairs, without any impediment on the part of the State and with no power on the part of the State to interfere with those affairs. The measure before the House seeks to harmonize on a logical basis all these demands by recognizing that there are certain private business affairs of cities which concern no one else in the State, and by providing that, as to those matters, the city may make amendments to its charter without going to Albany and without consulting anyone. Then, over and beyond that, there is another field of local affairs which, although they are purely affairs of that city, yet may affect the citizens of that city in an objectionable manner. For example, it might be that if the local authorities had unlimited power to modify their charter as to their local affairs, they would seek from a partisan motive, after an administration was elected, to wipe out whole departments of the city government and create whole new departments of the city government. The Committee on Cities believe that that would be a dangerous power, and they therefore have provided in this amendment that powers which belong in that category, where the city may initiate the charter amendment, that kind of an amendment which affects the framework of a city government must be submitted to Albany, where, unless the Legislature acts within sixty days, it will become law.

Then the Committee sought in the last place to reserve to the State clearly the power to exercise those functions, which, while they might affect a particular city, were, nevertheless, matters chiefly of State concern. The two spots in this bill on which, if you boil it down, the main criticism centers is the use of the words "framework of government"—that phrase is the one which has been attacked by all the speakers who have spoken on this floor; and on page 6 the proposed bill provided that every amendment which related to Section A, that is, the power to manage bureaus and departments and fix salaries, and so forth, which did not change the framework of government, but which concerned the fixing of compensation and management of bureaus, etc., might be dealt with there in the locality without any reference to Albany. The attack is made on this phraseology on the ground that the expression "framework of government" is a new and novel expression; that it may mean one thing and it may mean another, and to offset that criticism, the gentleman from New York, Mr. Wick-ersham, has now offered an amendment which, offhand, strikes

me very favorably, by providing that those amendments to a charter which fall within this grant of local power, but which do not affect the numbers, or the functions of departments, or the powers, or the method of removing elective officers, might be dealt with in the locality, but other matters would have to be submitted to Albany for nullification if the Legislature chose to act. If anyone in this Committee can suggest any other phrase that will accomplish the result which the Committee on Cities aims at, I am sure if that phrase is better, it will help this bill and it will remove one of the elements which I am frank to say does to a certain extent present some doubt in the matter of construction. There is, I would have you believe, gentlemen, no such multitude of perplexing legal questions bristling in this bill, as you might have been led to believe. The answers to these two questions, the one I have just asked and the one I am about to ask, solve practically all of these legal questions that have thus far been raised. The other legal question on which I will ask the Convention to place its attention is the use of the word "government" in line 4 of page 3, and if any member of this Convention can suggest a clearer expression of what the Committee intended to say, I am sure the Committee will be glad to have that suggestion. But, let me state first what the Committee on Cities was endeavoring to do. The Committee was endeavoring to place within the scope of local action the control of all affairs, business and property of the city which concerned the city alone, and it intended to leave to the Legislature the power by special act, subject to the suspensive veto, to affect a city in a matter which would be primarily of State concern, as a State, as distinguished from a matter of local concern. In my opinion as a lawyer, the Committee succeeded, and I see no such mare's nest as the preceding speakers have seen. For this reason: That we start this grant with a grant of exclusive powers to cities, so far as their property, business and local affairs are concerned. When we come to the Legislature we say that laws relating to the government of cities, applying to all the cities of the State, and so forth, *and not within the powers granted to cities by this article*, are defined as special laws.

The preceding speaker will have you believe that when the Committee wrote that expression "government of cities" that instantly they blotted out the exclusive constitutional grant of powers to cities they had already made, whereas, in my opinion, the contrary is the case. The old Constitution, in defining laws, used the words "property, affairs or government of cities." We took out of that expression "affairs and property" and placed them over within the exclusive control of the city, leaving to the Legislature whatever was included in the word "government," and not included

in the exclusive grant which we have just made to the city. In my opinion, the test is this. Are there any functions of government which are not clearly the private affair and business of the city? If there are, and there certainly are, those are the functions of government which are left in the State to be exercised by special law; and I believe that a canon of interpretation which the courts would apply in construing this section would be found in the fact that by Constitution we grant to cities, in express terms, subject to the general laws of the State, those powers over their business and property and local affairs, and the courts, in my opinion, would be bound to so hold.

Mr. Donnelly — Do you understand the term "business" modifies "affairs," or do you understand it to mean, as you just expressed it, "business, property and local affairs?" As I view this language used in this amendment, it would seem that the courts might construe that the term "business and local affairs" would mean business affairs and local affairs, whereas if it is modified to read "its own property, its own business and local affairs," then there would be no doubt upon the subject, just as you have expressed it. What is your construction upon that?

Mr. O'Brian — My construction of it is this, simply what I have already said: I do not think that the phraseology that you have cited would change it. I am simply trying to have the Convention understand the difficulty which presented itself to the Committee, and I say that I believe that this use of the word "government," when it is limited by saying that government not within the powers already granted to cities, clearly makes the distinction and clearly marks both the State and the municipal lines.

Mr. Cobb — Under this provision on page 3, which permits the State to pass special laws relating to the government of cities, would they have a right to pass a law amending the charter of a city?

Mr. O'Brian — In my opinion, no.

Mr. Cobb — Then, suppose that a charter of a city trenched upon a subject that touched the interests of the State, as in the matter of public health, for instance, would the State have a right to pass a law that would affect or amend the charter in that respect?

Mr. O'Brian — Mr. Chairman, you mean, Mr. Cobb, would the State have the power to pass a law —

Mr. Cobb — A special law.

Mr. O'Brian — It would, in my judgment.

Mr. Cobb — Then, if it amounted to an amendment of the city's charter, the city has not exclusive right to amend its own charter.

Mr. O'Brian — On that construction, you are correct, because that is a matter primarily of State concern.

Mr. Cobb — Where is that distinction which you now make; where is it contained in this law, and by what language?

Mr. O'Brian — Because, as I have already stated. The word "government" can and does include something in addition to local affairs, and — local property, business affairs, of cities, and it does include such matters as you mention, matters of health, matters of education, matters of punishment for crime, and, therefore, under this clause, the Legislature would have the right to pass special laws which might have the effect of amending a city charter.

Mr. Cobb — The word, or the language used on page 3 is that they may pass laws relating to the government of cities. I do not see as it makes any distinction or classification as to the kind of laws. The word "government" refers to the government of cities.

Mr. Franchot — I think I have caught Mr. Cobb's point. In answer to the question by Mr. Cobb, if you turn to page 5, subdivision *b*, you will find the words "the power, as hereinafter provided, to amend its charter or any local or special law relating to his property, business or local affairs of cities."

Mr. Cobb — The words "of cities," do not appear on my copy.

Mr. Franchot — It ends with "local affairs".

Mr. Cobb — Yes.

Mr. Franchot — That goes back to the controlling language on page 4, "Such power shall be deemed to include among others". Now, it was the opinion of the committee, not mine, that in subdivision *b*, the power to amend the charter was only power to amend it in so far as it related to the property, business and local affairs of the city. In other words, the words "related to its property, business or local affairs" and, as a matter of grammatical construction on the part of the majority of the Committee, qualified the word "charter" as well as the local or special laws. In my opinion it does not, but that was the intention.

Mr. Cobb — Mr. Chairman, I am simply trying to get information and perhaps I am a little slow in understanding. But, I can conceive, Mr. O'Brian, that a law that related to the property, business or local affairs of a city, might also have a relation to the public affairs of the State.

Mr. O'Brian — Yes.

Mr. Cobb — Mr. Chairman, and that the State might have an interest, and there might, if that happened, be some conflict between the two provisions. That is what I am trying to have made clear.

Mr. O'Brian — Mr. Chairman, I can only repeat what I have

already said. Senator Cobb is quite correct in his inference that there is no explicit language setting forth the distinction to which he referred. It is simply a matter of interpretation of those phrases.

Mr. Wickersham — Would not a substitution for the language under discussion, on page 3, the language in italics, of the following language, correctly impart the thought of the framer of the measure, and, perhaps, somewhat more clearly elucidate the idea?

Mr. D. Nicoll — What page?

Mr. Wickersham — Page 3, in lieu of the italics, beginning on line 3, and running down to the end of line 7, insert instead the words "laws not within the powers of cities granted by this article and not affecting the government of cities in matters of general State concern or applying to less than all the cities of the State, without classification of distinction, are defined for the purposes of this section as special city laws". I ask the gentleman from Buffalo whether that phrase would not perhaps more clearly define the idea than the words in italics. I intend to offer it as an amendment at the appropriate time.

Mr. Franchot — Is not the word "not" misplaced?

Mr. Wickersham — That word is misplaced.

Mr. J. L. O'Brian — Mr. Chairman, with the word "not" stricken out, that phraseology exactly expresses my own view of this measure and, personally, I am very glad that that suggestion is made. I am simply trying to place before the Convention the difficulties which present themselves to the Committee. If these two difficulties can be removed, that is to say, if the word "framework" can be replaced by a more explicit phrase and if this definition can be made more accurate by explicit language, I can see very little grounds for objection to the phraseology of this measure.

Mr. Low — May I ask the clerk to read the language of that proposed amendment? I did not hear it. Perhaps Mr. Wickersham will read it.

The Chairman — Will Mr. Wickersham again read the proposal for the benefit of Mr. Low?

Mr. Wickersham — If the delegate will yield for a moment, even though it is out of order, because we are technically discussing section 4. I will offer this as an amendment to section 3. I indicate where it is to be put in.

The Chairman — If there is no objection, the Secretary will read the amendment.

Mr. Wickersham — Mr. Chairman, it may not be noted there but it should read to strike out the words in italics and insert in lieu thereof the words which the clerk is about to read.

The Secretary — Page 3, lines 3 to 7, strike out the words in

italics and insert in place thereof the following: "Laws not within the powers of cities granted by this article, and affecting the government of cities in matters of general State concern but applying to less than all the cities of the State without classification or distinction are defined for the purposes of this section as special city laws."

Mr. J. L. O'Brian — Mr. Chairman, as a matter of offhand opinion, I think that that amendment would meet the point which was raised and, in my personal view, makes this bill very much clearer. Under the bill as thus amended, as I read it, the sole power of initiating changes in a city charter would rest within the city itself. The Legislature could not interfere with that power to the extent of initiating any legislation affecting a city, except that where the exercise of the power on the part of the Legislature was substantially a matter of State concern, the Legislature might act, subject to the suspensive veto of the city. When I speak of the Legislature making charters and passing amendments, I certainly would not wish to criticise the action of any member of the Legislature. The Cities Committees of both Houses of the Legislature, with the sole exception of the Committees on Judiciary, are the hardest-worked men in those houses. As Senator Foley said, they are swamped with work to-day. They have been for years. They have tried to extricate themselves from this plight by making general grants of power, and that is something that seems to have been entirely lost sight of in this discussion. In the first place, in 1913, the Legislature enacted what was commonly called the "Home rule act for cities." It never became operative because it contained certain conditions on the method of its operation which so crippled it that it never became of any great value. But it is worth the attention of the Convention to know that the Legislature when it set out on its effort to confer home rule used almost the identical language used in this Proposed Constitutional Amendment: "Every city is granted power to regulate, manage and control, its property and local affairs and is granted all the rights, privileges and jurisdiction necessary or proper for carrying such powers into execution." Then the Legislature last year embarked upon another endeavor to satisfy the claims of the cities of the State, and they enacted for the use of the cities of the second and third classes the so-called "optional charter bill", which provided five city form of charters, with the right of the people in the locality, by using the initiative with the petition, to get plans of government before the people. This optional charter bill has already gone into active operation, into too active operation, Mr. Chairman, in certain cities of the State. That brings me to the discussion of one feature of the amendment which is before us on which I would

like the attention of the House. This feature is not, in my opinion, an essential part of the scheme presented. The scheme presented is "Initiative in the city, subject, except as to certain changes in city charters, to nullification by the action of the Legislature." In addition to this power of amendment, we must make some provision for granting new charters to cities. The proposed amendment provides that, as to new cities, and they come into existence very slowly, the Legislature shall, as now, prescribe the initial form of government. But, once those new cities are organized, all the powers granted in this proposed amendment vest in them. What are we going to do about cities which not only desire to amend their charters, but which desire to provide themselves with new charters. We have deprived the Legislature, in this amendment, of the power to grant charters to cities now existing. The question therefore is, first, where shall we vest the power to prepare the revision of such existing charters; and, secondly, in what way shall we safeguard the operation of that power? One method would be the method adopted in the optional city plan, namely, that whenever in cities of less than twenty thousand, 10 per cent. of the inhabitants file a petition demanding a vote upon one of the five optional forms of government, by filing that petition they have the right to have a vote. If that particular plan is voted down, they may file another petition and have another vote; and if that is voted down, they may file another petition for the third plan and have another vote. The result of that is, I am informed, that in the city of Cohoes they have voted on two different plans, at two expensive city elections, between the months of November of last year and the first of June of this year. Now that is one method for initiating your revision of a charter, namely, allowing the inhabitants or a certain proportion of the inhabitants of cities to file a written demand. Another method would be to leave it to the Legislature to determine how often cities should have an opportunity to revise their charters. If we are to be consistent, that plan is objectionable, because we are seeking to leave the power and the discretion as to matters of local government with the locality, uncontrolled, so far as possible.

Mr. Franchot—Is it not true that under the provisions on page 5 of this Proposed Amendment legislative action will be necessary in order to permit the exercise of the right the so-called elections thereby conferred?

Mr. O'Brian—What lines do you refer to?

Mr. Franchot—I am referring to the provisions on page 5, line 6 and down to and including line 3 on page 6. The question arises in my mind, who is going to provide for the election, the nomination and the various detailed provisions which certainly

will be necessary in order that the provisions of this paragraph may be carried into effect? It is left to the Legislature, is it not, under this plan?

Mr. J. L. O'Brian — I have not that same distrust of the Legislature that many have, and I suppose we will have to leave it to the common sense of the Legislature to provide by general law a method which shall be operative in all cities. But, the point that I was making, or rather the point I was going to make, is that after considering these various methods of putting a charter revision plan into operation, the Cities Committee did adopt — and, in my opinion, sensibly adopted — the plan provided by the Constitution of the State of New York, by deciding that every eight years there should be submitted, beginning in 1916, to each city the question, Shall there be a commission to revise the charter of the city? Now the cities that do not want charter revision will not have charter revision. Cities that do need charter revision will have the privilege every eight years — not eight times a year but every eight years — of voting "Yes" or "No" on that question. Then, in the year following, the charter commissioners themselves are to be elected, and I assume that those men, in the ordinary run of human events, will state when they are candidates what plans of charter revision they, respectively, favor. They will run on platforms. They will be elected. The charter will then be made in the open in the locality and the following year — either one year later or by a special election held before the year elapses, the people of the community will have the right to vote upon the charter. The charter then is, like the charter amendments which affect the framework of government, submitted to the Legislature for action, without the power on the part of the Legislature to amend it in part or to repeal it in part. In other words, gentlemen, certain amendments can be made to this plan which you have before you without affecting the framework of this plan, but if you should give the Legislature power to modify or repeal or amend a part of a charter or a charter amendment, you would nullify the whole grant of power and leave the situation exactly as it is to-day.

Mr. Franchot — If you carry out the analogy to the method of amending the State Constitution or the calling of a State Convention for amending the Constitution, you would permit the legislative body of the State, would you not, to submit it to the people, in between times, whether or not they desired a general revision of their charter?

Mr. J. L. O'Brian — Mr. Chairman, if the Convention should choose to amend its part of this plan to that effect, it would not affect the general scheme of the amendment. Personally, I

should strongly object to it. I have the old-fashioned notion that, once the people have elected to do certain things under a form of government and made their choice, they should be made to abide by it, for a short time, at any rate. I do not believe it essential to charter-making powers that every year, or two or three times a year, municipalities should be exposed to the trouble of revising charters and making new charters for cities. That brings me to another strong point in this measure. This measure, you will observe, gentlemen, unlike most of the measures presented, does not start all the cities of the State off by a mandatory law providing for their making of charters. It leaves it to the people of the cities to decide whether or not they need a charter revision. If they do not desire it, they need not have it. That conforms to my views. Now, I have been asked on the floor, informally, Mr. Chairman, whether these eight years are not too long a period, and also whether these eight years are not too short a period. One member of this House would have it left, he tells me, so that cities every twentieth year might decide whether or not they would revise the charter. Another member told me this morning that he thought, as Mr. Franchot has said, that any time the people desired to have a vote they should have the right to have a vote and put this plan to operation. Now, the Committee have considered all of these alternatives and, so far as their poor judgment is concerned, they have fixed on eight years as a proper period. That is partly for this reason. If you fix the period you must have it in cycles of four, in the view of the committee. This next year, 1916, would be a presidential year. The people would vote not on their charter, but on the question of whether or not they desired to revise the charter. Then the year following, the off year, the odd-numbered year, they would vote upon the question of whom they would select for the purpose of revising their charter. In the talk that has been had in criticism of this measure there are certain features of it that I think have been entirely obscured. This plan does do certain things. In my opinion it is the natural evolution of the present system of charter-making and charter-granting, as now in practice, exercised by the Legislature of the State of New York. It does make, in my opinion—and I cannot make that too emphatic—an exclusive grant of power to cities in their local affairs, and if I did not believe that I could not support this amendment.

Mr. Schurman — I should like to ask a question on that point. I understand the exclusive grant of functions made for cities, in the first paragraph of section 4 cannot be interfered with by the Legislature by special law. How far do you consider that such interference is possible, by virtue of the phrase "subject to the

Constitution and to the general laws of the State"? That is the point to which Mr. Franchot referred.

Mr. J. L. O'Brian — Mr. Chairman, so far as I am aware, every proposition on home rule, excepting always the propositions for legislative home rule, made their grants subject to this same limitation of the Constitution and the general laws. I believe the cities will be practically immune from interference. May I say right here that what has bothered the cities of this State, what has brought about this cry for home rule has not been the interference of the Legislature in matters of large import; it has been the trifling matters — first, the interference of the Legislature in trifling matters, and, second, the difficulty of the city in trifling matters to get justice from the Legislature. I think the city is amply protected under the phrase "general laws", because it would be practically impossible to frame a general law of the kind here defined which would apply equally to all the cities of the State and which would do a serious injustice to one or more.

Mr. Schurman — Then I understand if the Legislature desires to interfere with a city of the State in regard to the subject of a department bureau or the salaries of the officers in that city, it would have to pass a general law applicable to all the cities of the State with reference to such departments, bureaus and salaries?

Mr. J. L. O'Brian — That is my understanding, Mr. Chairman, as the measure is now amended—under the Proposed Amendments offered by the delegate, Mr. Wickersham.

Mr. E. N. Smith — The power is granted in subdivision *b* on page 5 to a city to amend its charter. I would like to ask, in the amendment of a charter, can a city adopt a charter, taking to itself powers not within the general grant as contained in the proposed amendment?

Mr. J. L. O'Brian—Mr. Chairman, in my opinion, the city cannot acquire such powers. Perhaps I should say a word on section *b*. Subdivision *a* cites a certain specific field of powers, such as control of salaries and organization of departments. Subdivision *b* grants the power to amend its charters. Reading this section as a whole I have no doubt whatever, in my own opinion, that subdivision *b* is not a grant of substantive power, by which the city can reach out and take to itself other powers than those here conferred, but subdivision *b* is intended to confer what a lawyer would call the objective power on a city, the power to provide the amendment by which the substantive power shall be exercised. This proposed amendment, gentlemen, has very distinct merits. You may criticize it, you may think it does not go far enough. Certainly I know of no one who thinks it goes too far, but it is a

sound working hypothesis. It does give to the city exclusive initiatory power. It does do another thing, and I wish to emphasize that very seriously. At the present time, what troubles the cities is not that the Legislatures are unjust, not that Legislatures are unfriendly, but it is this fact: That when the city desires to make a modification of a minor character in its own instrument of government, it must come to Albany, make its fight at Albany, and it must overturn the indifference of the Legislators — and I use that word in no invidious sense. When I was a member of the Cities Committee, how much did I know about the city affairs of the city of Corning and the city of Painted Post — how many policemen they ought to have and how many firemen they ought to have? I was obliged to make such investigation as I could and take somebody's word for it. Now, when a city desires a modification in these minor particulars, under the present existing arrangement in the State, the city comes down here and rolls a stone uphill; it has to overturn the indifference, the ignorance of Legislators as to conditions in that city. Under this amendment, gentlemen, that process would be absolutely reversed, and when Mr. Judge O'Brien spoke this morning of the shortcomings of the idea of nullification, as he called it, he overlooked the fact that by this scheme of nullification, you place the benefit of the doubt to the side of the city. You transfer from the city the burden of proof to the Legislature. The city frames its amendment, and if it affects the number of its elective officers, it sends it to Albany, and if the Legislators acting through their Cities Committee, do not act within sixty days, the measure becomes law. Now, under this proposed amendment, I disagree with Senator Foley in his conception that city laws would not be decreased. They would be immensely decreased. They would be, after a few years, practically a nullity. By city laws I mean acts of the Legislature interfering under the guise of matters of State concern. It does leave all the cities where they are with their existing charters. They need never make a change unless they choose to. The measure does reverse the so-called rule of technical construction, and put the advantage in favor of the city so far as its local affairs are concerned; and lastly — not least — it would lead — when men come to revise city charters it would lead to a simplification of charters by eliminating from the present charters of the State all of the dead wood and excrescences that have been put into charters, which belong in the field of ordinances. And lastly, not least of all, this amendment would carry out a principle that this Convention is aiming at, namely, the principle that in the Legislature consideration of the great matters of general import ought to be separate from matters of private and local concern, because under the

proposition which you have before you, the city bills — that is to say, the charter amendments that come from cities and are printed here and referred to the Cities Committee, would all automatically be out of the way by the first day of March in every year, and the Legislature would be free of further annoyance from that source.

Gentlemen, I want to repeat what I said before, that this measure attempts nothing revolutionary; it does attempt to follow out the line of practice that has been the line which we have been following in this State. It does preserve the suspensive veto, does make exclusive grant to cities of far-reaching benefit, and transfers to them the benefit of the doubt on all questions of municipal affairs wherever the query arises as to whether or not the city has the power to act. It will work. It is a sound, logical plan and does afford the relief to the cities.

Mr. D. Nicoll — Mr. Chairman, the subject which we have under consideration is undoubtedly one of the gravest, if not the gravest matter likely to engage the attention of the Convention, for we are dealing with the future government of seven millions, as I understand the figures, out of the ten millions of inhabitants of the State. In addition to that we are dealing with the fortunes of that great city in which are now assembled over one-half of the inhabitants of the State of New York. I think it is a misfortune that a subject so grave should come up for discussion upon the Friday afternoon of the hottest day which we have yet spent in Albany. Perhaps it would have been better if it could have been considered by a larger majority of the Convention. Now the report of the Committee on Cities — and this amendment has been before the Convention and the public for now about ten days or more — about ten days. I think I state the general view correctly when I declare that as the amendment stands to-day it disappoints the just expectations of those who for twenty years have had hopes of home rule for cities. I have received from the Citizens Union of the City of New York, a body of citizens who devote themselves unselfishly and patriotically to the cause of good government, from the City Club and other bodies of that character, a protest against the adoption of the amendment in its present form, and I think I may say that the majority of the representatives of the city of New York, especially those who are in the minority in this Convention, look upon it as insufficient because it fails to give the city control of its own government. I have made some examination, rather an insufficient one, I think, of this amendment and I have some knowledge of what the work of the Cities Committee has been. If it has been anything like the work of this Committee on State

Finances, or the Judiciary, then I say that its conclusions are deserving of the most patient examination by the members of this Committee. And so instead of listening to the voices of those who protest against it all, I have examined it for the purpose of determining whether or not it may not be a step forward, whether it may not contain at least the germ of some real home rule for cities, and whether we may not be entertaining an angel — a small one — (laughter) unawares. At all events, my disposition is not to throw in the wastebasket or to send it back promptly to the Committee with regrets, but to see if we cannot do something to make it better; to see if we cannot supply by amendment some of the defects which have been pointed out by the criticisms of Mr. Foley, Mr. Franchot and others. Now, on some suitable occasion I would like an opportunity to disclose to the Convention my views in general on the subject of home rule, and local self-government for the five million people who dwell in the city of New York. As I understand it this is not the time for such a deliverance. I am confined now to a discussion of Section four. It is true our distinguished leader has proposed an amendment to Section three, but I was enjoined not to do that, that that was the privilege of the other side, so that I should confine myself to my Proposed Amendments to Section four. Of course, the one great question before this Convention with regard to this amendment is this: Does it put an end to the eternal tinkering with the government of the city of New York by the Legislature of the State of New York? Or is that going on for another 20 years? Does it put an end to that dual government, partly local and partly State, under which the city of New York is suffering to-day and has suffered for the last fifty years? The question is if we adopt this amendment are we to get in the city of New York something which is not subject to change, something to which we can hold on in the way of government, or are we to go on for another twenty years with that ever-shifting system under which the government which you criticise has grown up?

The Chairman — Mr. Nicoll, before you proceed to your specific amendment, the Chair simply desires to call the attention of the House to the fact that recess time has arrived, and to ask what is the pleasure of the House. Whether you intend to stay any longer now.

Mr. Wickersham — Mr. Chairman, I hope Mr. Nicoll will be allowed to finish his remarks before we rise.

Mr. D. Nicoll — It would take considerable time, Mr. Chairman, I have a great many amendments.

Mr. Marshall — Mr. Chairman, I would suggest that amendments might be handed up and if we could have them printed for consideration this evening — I have a few I would like to send in, to save time.

Mr. Wickersham — Mr. Chairman, I would move that any amendments that are ready may be submitted —

The Chairman — I don't think any motion is needed. The Chair will entertain any amendments presented.

Mr. Wagner — Mr. Chairman, may amendments be in the form of substitution? I have a right under the rule — but I did not want to interfere with your idea of the procedure.

The Chairman — Having examined the authorities I believe that amendments which are substitutes may properly be offered at this time but that they cannot be considered until after the proposed amendment before us has been gone through with, section by section, and its language perfected, and I will so rule.

Mr. D. Nicoll — Are we to be allowed to offer substitutes too?

The Chairman — The Chair so ruled, but they cannot be considered until after General Order No. 50 has been gone through.

Mr. Wagner — Then I offer the following as an amendment to the proposal now before us. It is to substitute the proposal I send up in place of the one before us.

The Chairman — You don't desire it read at this time, do you, Senator?

Mr. Wagner — No, I think I would rather wait until we are ready for it.

The Chairman — The Chair understands that amendments now offered will be printed and placed on the desks of the members if possible to-night.

Mr. Wickersham — And consideration given — taken up in their due order.

The Chairman — Yes.

Mr. Wagner — Mr. Chairman, on behalf of Judge O'Brien I desire to offer an amendment.

Mr. E. N. Smith — I am a member of the Cities Committee, and I do not intend to take up the Convention's time, except as to certain matters as to which I was in disagreement with the report of the Committee, and I did intend to offer certain amendments carrying that out, and now I can better do that by a substitute which will carry out the idea that I can by offering the several amendments which would be necessary to bring out that idea. So that, with that view, I will now offer a substitute.

Mr. Latson — Do I understand that the opportunity for offering substitutes or amendments is now expiring?

The Chairman — Oh, no. You will not be foreclosed. As I understand, Mr. Marshall has something.

Mr. Marshall — I have already offered it.

Mr. Wickersham — In order that the bar of the Convention may now be raised, I move that the Committee do now arise, report progress and ask leave to sit again at eight-thirty.

The Chairman — You have heard the motion. All in favor say Aye, opposed No. The motion is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Austin — The Committee of the Whole has had under consideration the Special Order of the day, General Order No. 50, has discussed the same, made some progress, and asks leave to sit again.

The President — The question is on granting leave to sit again. All in favor say Aye, contrary No. The leave is granted.

Mr. Wickersham — If you will pardon me, Sir. In connection with that motion, there was a motion made in the Committee of the Whole, which I suppose ought to be renewed in the Convention; that the amendments offered in the Committee of the Whole be printed for the use of the members this evening.

Mr. Marshall — I would make the suggestion, in view of the fact that substitutes have also been offered at some length and ordered printed, that if there is any question as to having them printed and ready this evening, that preference be given to the amendments, and that the substitutes be printed later.

Mr. Wickersham — I accept that, Mr. President.

The President — All in favor of the motion that the amendments offered in Committee of the Whole to the pending bill be printed in time for consideration this evening say Aye, contrary No. The motion is agreed to.

Mr. Barnes — I ask unanimous consent to offer a resolution.

The President — Is there any objection. The Chair hears none. The Secretary will report the resolution.

The Secretary — By Mr. Barnes: Resolved: That if this Convention adopt Proposed Constitutional Amendment, Introductory No. 701, in its final form, such Proposed Amendment be submitted to the electors at a general election to be held in November, 1917.

Mr. Wickersham — I presume that, under the rules, will lie over for twenty-four hours?

The President — The resolution will lie over, under the rules.

Mr. Wickersham — Mr. President, I move that the bar of the Convention be now raised.

The President — It is moved that further proceedings under the call of the Convention be dispensed with. All in favor of the motion say Aye, contrary No. The motion is agreed to.

Mr. F. L. Young — I regret to say that matters at home require

my attendance there, and I respectfully ask leave of the Convention to be excused from attendance this evening and to-morrow.

The President — Is there any objection? There being no objection, the leave is granted. The hour fixed in the resolution having arrived, the Convention stands in recess until eight-thirty this evening. Whereupon, at 5:30 p. m., the Convention took a recess until 8:30 p. m. the same day.

AFTER RECESS—8:30 P. M.

The President — The Convention will come to order.

The Convention will go into Committee of the Whole on special orders.

Mr. Quigg — Mr. President, I am afraid a quorum is not present. I raise the point of order that a quorum is not present. We are engaged on a very important thing. Really, Mr. President, we ought to have a quorum.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Aiken, Allen, F. C., Austin, Bannister, Barnes, Barrett, Bell, Berri, Betts, Blauvelt, Bockes, Bunce, Byrne, Clinton, Cobb, Cullinan, Curran, Deyo, Dick, Donnelly, Dunmore, Fancher, Fobes, Foley, Franchot, Gladding, Green, Greff, Haffen, Hale, Heaton, Hinman, Johnson, Kirby, Landreth, Latson, Law, Leggett, Lincoln, Linde, Low, McLean, Mandeville, Marshall, Martin, F., Martin, L. M., Meiggs, Mereness, Nicholl, C., Nicoll, D., Nixon, O'Brian, J. L., Owen, Parsons, Phillips, J. S., Phillips, S. K., Potter, Quigg, Rhees, Rodenbeck, Sanders, Sargent, Schurman, Sears, Shipman, Slevin, Smith, E. N., Smith, R. B., Standard, Steinbrink, Stimson, Tanner, Tierney, Tuck, Van Ness, Wagner, Weed, Westwood, White, C. J., Wickersham, Young, C. H., President.

Mr. Quigg — Mr. President, may I inquire how many members are present?

The President — The Secretary reports that eighty members are here.

Mr. Quigg — This is really too serious a subject to consider even with a scant quorum and there is not a quorum here and I move that we adjourn until to-morrow morning at ten o'clock, and I hope that Mr. Wickersham will move some means to provide a quorum to be present to-morrow for the transaction of business.

Mr. Wickersham — I hope that Mr. Quigg's motion will not prevail at present. Of course, he is within his right to make a

motion, but I don't think it tends to advance the business of this House at all. We may get a quorum, we are near to it now, and I trust the motion will not prevail.

Mr. Quigg — Mr. President, I will wait for it, and I will withdraw the motion presently.

Mr. Wickersham — I think it is evident now that we are not going to secure a quorum and I move that we adjourn.

The President — It is moved that the Convention do now adjourn. All in favor say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until to-morrow morning at 10 o'clock.

Mr. J. L. O'Brian — Mr. President, I think it is sufficiently apparent that there will be no quorum here to-morrow morning, and if that is the case —

The President — It is not within the power of the Convention to do anything about it. The only thing that it is competent for the Convention to do, if there is no quorum present, is to take action to bring about attendance of the members or to move to adjourn. Whereupon, at 9:15 p. m. the Convention adjourned to meet at 10 o'clock a. m., Saturday, August 14, 1915.

SATURDAY, AUGUST 14, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. We praise Thee, oh God, for all the men who have been found faithful in their various stations in life, men who could not be drawn aside from the paths of rectitude by the enticements of gain or the allurements of pleasure or tempted to revenge by the possession of power, for the men of unimpeachable character and honorable service. We thank Thee that Thou hast girded them with power and enabled them to make the forward steps in the marches of human progress. Help us to emulate them, we beseech Thee, and as we seek to combat the wrongs that need resistance and to help the causes of good that need assistance, may we be governed by the cardinal conviction that the men of integrity and character and faithful service are the saviours of society. We pray Thou wilt help us, then, to interpret to the world something of sterling character and communicate to our day and generation those gracious impulses which conduct men to larger freedom and to nobler life. For Thy name's sake. Amen.

The President — Are there any amendments to be proposed to

the Journal as printed and distributed? If there are no amendments to the Journal, it stands approved as printed. Presentation of memorials and petitions. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Quigg — I move that when the Convention adjourn to-day it adjourn until Monday at 10 o'clock.

The President — That is already provided by the standing order of the House, so that the motion is unnecessary.

Mr. Quigg — I think it is, sir.

The President — Reports of Standing Committees. Reports of Select Committees. Third reading. Unfinished Business of General Orders. Special Orders.

Mr. Wickersham — Mr. President, I move that the Convention resolve itself into Committee of the Whole on the standing special order.

The President — Under the resolution establishing the special order, the Convention will go into Committee of the Whole on the special order of the day, and Mr. Austin will resume the Chair.

The Chairman — The Convention is in the Committee of the Whole on the special order of the day, which is General Order No. 50. The subject of consideration is section 4. The gentleman from New York, Mr. Nicoll, has the floor.

Mr. D. Nicoll — I have made some amendments which I am unable to find at this moment. I had a copy of them. My purpose now is, in a few words, to call the attention of the committee to the several amendments proposed by me, without undertaking at this time any extended advocacy of them. The first amendment is on page 4, where I have moved to insert after the word "property," the word "government." That would then read, "Every city shall have the exclusive power of managing, regulating and controlling its own property, government, business and local affairs." Now, you can see at a glance that that goes to the crux of this whole question, for, if we could confer upon the city power so far as its own city government and affairs is concerned, exclusive power, it would have very little cause, in my judgment, to complain. My next amendment is on page 5, line 3,— no, line 4, where I again insert the word "government." That has no significance, except to make the sections consistent. My next amendment is on page 5. There I propose to strike out — if the gentlemen who are following me will be kind enough to pass that over for a moment and turn to my next amendment which is on page 5 — it does not appear so in the printed account but amendment No. 8 should be amended by Mr. Nicoll — on page 5 strike out lines 6, 7, 8, 9, 10, 11 —

Mr. Byrne — Mr. Nicoll, will you wait just a moment. We haven't got the amendments before us.

Mr. D. Nicoll — May I address a question to Mr. Byrne? Now, Mr. Byrne, have you the paper now?

Mr. Byrne — Yes, sir.

Mr. D. Nicoll — I will explain my proposed amendment on page 5, that is amendment No. 8, and the gentlemen who are following me will be kind enough to include the words on page 5. Strike out lines 6, 7, 8, 9, 10, 11, 12, 13, down to 14,— they have made that word wrong — down to the word “provide.” Now, you will see what the effect of that will be. As it reads now it provides for the submission of the question,— “Shall there be a commission to revise the charter of such a city” — in the general election in the year 1916. That is, if this Constitution is adopted that question will be submitted to the electors of the city next fall. That is at the time of our gubernatorial and presidential election. In the year 1894 we decided that city questions should be forever divorced from State and National, and that city elections should be held in the odd-numbered years. I certainly think it would be to take a step backward if we mixed up the question of a new charter with the question as to whether Mr. Wilson or — Therefore I move to strike that out. Now, therefore, I move to strike that out. I also move to strike out the words “If in any city a majority of the votes cast upon such question be in the affirmative, there shall be chosen by the electors of such city at the general election in the next following year,” and so forth. It seems to me there is no adequate reason why there should be two of them, or why, if we are going to have a city charter, we should not elect the persons who are going to make it at the same time that we answer the question whether we want it. In fact, it would very much help the election, for instance, if we nominated, at that time, Mr. Low, Mr. Wickersham, Mr. Stimson, and some of our other leading citizens, and Mr. Parsons. Why, you can see that the people of the city of New York would be very likely — yes, and Mr. Hinman — to answer the question in the affirmative; whereas, if we nominated others not now named, the answer might be in the negative.

Mr. Franchot — Do you suggest the insertion of anything in place of this language which you move to strike out?

Mr. D. Nicoll — Yes, it is there. I want seven commissioners for the cities outside of New York, and sixteen for New York, as now provided. In order to make my series of amendments consistent, I offer as a further amended on page 6, after the word “by” on the first line of page 6 — no, instead of that, strike out the words “by joint resolution” and after the word “thereafter” and before the word “shall”, on line 2, insert the

words "by two-thirds vote of all the members elected to each branch of the Legislature."

Mr. Low — Two-thirds or three-fifths?

Mr. D. Nicoll — Mr. Low, I noticed, when one of my amendments was reported, that the words "three-fifths" were included. When I wrote it, I think it read "two-thirds", but, however, let it stand at two-thirds, and we will discuss it from the aspect of two-thirds or three-fifths, as the case may be.

The Chairman — Does the Chair understand, Mr. Nicoll, that you are offering a further amendment now? Do I understand that you are offering a further amendment?

Mr. D. Nicoll — Yes, Mr. Chairman.

The Chairman — And you will send it to the desk?

Mr. D. Nicoll — I will send it to the desk. Now, I come back to page 6, line 16, where I propose to insert the words — we got through with page 5 some time ago; now we are on page 6. On page 6, line 16, after the words "shall be", insert the words "submitted to the electors of the city and if approved shall be". Of course you see that is likely to raise a question to which we have to give serious consideration, as to whether in making these amendments to the charter of New York, we shall follow the California plan — the San Francisco plan — or whether we shall allow ordinary amendments to the charter to be made by the Board of Aldermen, the Board of Estimate and the Mayor. I admit that is a very serious question, and we ought to get the benefit of the views of the different members of the Convention upon the subject. Some of the figures pointed out by Mr. Low recently show that it may be that the electors of the city will display great indifference, so we shall have a charter amended just as we have the Constitution amended, by a scant vote. Since we can amend our Constitution by a scant vote, and call a constitutional convention by less than one-tenth of all the voters of the State, and by a bare majority of 1,300, I don't know why we should not amend the charter by a small minority of the electors. However, that is a subject upon which men will differ, and all we can do is to try to reach the right conclusion.

Now I have also on page 6 proposed a final amendment, on line 19, where I strike out the words "by joint resolution" and insert the words "by three-fifths vote of the members elected to each branch of the legislature." Those, Mr. Chairman, in substance, are the amendments which I have in mind. I was able last night, on account of the adjournment of the Convention, to give further study to this article, and I wish to express the hope and some belief that, that if some amendments are made to it, on the line of those proposed by Mr. Wickersham and others,

and, perhaps, by myself, we shall really make a long step forward in the way of giving home rule to municipalities. I wish at some future time to lay before the Convention some thoughts with regard to the amendments which I propose.

Mr. Marshall — Without at this time undertaking to express any opinions with respect to the various fundamental theories which have been considered in the Cities Committee, as I am informed, and which are presented in the measure of Mr. Franchot, Mr. Ray B. Smith and in the substituted provisions, proposed substituted provisions which have been introduced, I wish to make some remarks explaining the number of amendments which I have introduced and, perhaps, to suggest others with a view of perfecting the plan which has been recommended by the Committee. There is no doubt that the time has come when the people of this State demand that there shall be a greater measure of home rule extended to the municipalities of the State, than has thus far been granted. In 1894 the subject was one as to which there had not been developed a very profound thought. There was a desire, a feeling, an aspiration toward home rule, and yet when the subject was discussed in the Convention for many days, after the most painstaking study and deliberation, the plan which was proposed by the Cities Committee was rejected and cast into the scrap heap, a battered, disfigured object. I felt at that time that something should be done by the Convention, and so one night I proceeded to the scrap heap and from among the *disjecta membra*, I tried to resurrect what I recognized was a germ of a good idea and proceeded to formulate it into the section which is now in the Constitution, and which has been referred to as the suspensive veto. Although it was recognized at the time to lack perfection we may, nevertheless, say this about it to-day, that it, with all due modesty, performs some useful function, and that it placed it within the power of our cities, in many instances to prevent legislation which was not desired by the municipalities, and we may also say, that much of the legislation with respect to cities, which has been the subject of criticism, would never have appeared upon the statute books, if the municipal authorities had not winked at what they called legislative aggression and had exercised their power of suspensive veto which was lodged in them. We have heard it said that the city of New York has, by means of mandatory legislation, had imposed upon it great liabilities to pay salaries which should not have been imposed upon the municipality; yet, if you look at the records you will find that in many of those instances the mayor of the city of New York, instead of vetoing the legislation passed in Albany, approved of it, or did not exercise his suspensive veto,

with the consequence that the city was compelled, by virtue of legislation which it could have prevented, to pay these large sums which have been made the subject of many a jeremiad.

We have now come to the point where we may take a further step forward. Possibly, the time has not come for the perfection of counsel and for adopting an absolute measure, unrestricted and unqualified, of home rule, but it is quite likely that the general principle which is laid down in the proposal introduced by the Committee, when amended will prove to be a desirable amendment, and, as I believe, can be found to become a workable measure. Without going into any careful analysis at this time, I desire, however, in the first instance, to call attention to certain unfortunate phraseology, unintentional, I believe, which may result in great mischief, if not corrected. The first amendment that I proposed, is to strike out from line 15, page 4, the words "the constitution and," and to substitute in place of them the words "the provisions of the constitution and further subject". That would make the clause read, "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs, subject to the provisions of the constitution and further subject to the general laws of the State applying to all the inhabitants," etc. The criticism I make of the present language is that reading it as it must be read in constitutional interpretation and construction, it would mean that every city would have the power to manage its affairs, etc., subject to the Constitution applying to all the inhabitants, or applying to the cities or counties of the State, without classification and distinction. That would, therefore, merely subordinate the language of this provision to such constitutional provision which in terms applied to all the inhabitants or all of the cities or counties of the State; and, therefore, if there is no constitutional provision which does not apply to all the inhabitants or does not apply to all the cities or counties of the State, this provision is not to be subject to these particular clauses in the Constitution. Now, we are all of us concerned in the great subject of taxation and in the question of indebtendess. The information which we have received as to the enormous municipal indebtedness in this State and the tendency toward increasing rates of taxation is so striking that there is no language in this provision which would have the effect of doing away with debt limitation or limitation upon the amount of taxation, but we must set our faces rigorously against the introduction of such language into the Constitution. Whether the city of New York has a net indebtedness of one billion dollars or more, it is dangerously approaching that figure, and we know that the tendency has been in late years to increase

the indebtedness to an enormous extent without regard to consequences, and the effect of that has been, in order that the city might not on the face of the record exceed the debt limitation, assessments upon real property in the city of New York have been raised so that in many instances the assessed valuation of property is greater than the market value of property, or greater than the amount that can be realized upon it at an ordinary sale.

Now, in conjunction or juxtaposition with the language which I have just read from section 4 of the home rule article as proposed, let us read section 10 of article VIII of the Constitution, for the purpose of ascertaining whether there are in that section any provisions which do not apply to all the inhabitants of the State, or which do not apply to all the cities or counties of the State. If they do not so apply, then they are, so far as this provision is concerned, obliterated, and the question is whether it is the intention of this Convention to obliterate and abrogate those provisions, which apply, for instance, to the State of New York alone, and not to all of the inhabitants of the State, or all the cities and counties of the State. We find the general principle in section 10, article VIII: "No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes." Then come the provisions in regard to the limitations on the amount of the indebtedness: "No county or city whose present indebtedness exceeds 10 per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit." Then comes the clause to the effect that the section is not to be construed "to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue provided that the amounts of such bonds which may be issued in any such year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation."

Mr. Low — I may say that the Committee had no such intention as Mr. Marshall has pointed out in the language it used. I

take advantage of this moment to call the attention to the bill reported by the Cities Committee, No. 788, in which we maintain and strengthen the provisions of section 10. The phraseology was intended to refer only to general laws and not to the Constitution. I think Mr. Marshall has pointed out a defect which should be remedied. I can see no possible objection to accepting the change in language which he proposes.

Mr. Marshall — I haven't any doubt that there was no such intention on the part of the Committee. I merely call their attention to this provision. We cannot deal with intentions which are to be found outside of the language of the Constitution, and when the court comes, if it ever should, to construe the language here adopted, while to some extent what is said in the debate and what is said in a report may be a rush-light to guide our steps, yet, if the language is as clear as the blazing sun to the contrary, the courts would be compelled to accept the language of the Constitution; rather than to be guided by the dim light afforded by a committee report. But, in order to complete my argument, I want to say that there are other features in this section which emphasize my views. There is a provision that "All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes which are not required within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by the city of New York, after the first day of January, nineteen hundred and four, and debts incurred by any city of the second class after the first day of January, nineteen hundred and eight, and debts incurred by any city of the third class after the first day of January, nineteen hundred and ten, to provide for the supply of water, shall not be so included; and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs, and maintenance for which the city is liable, in excess of the interest on such debt and of the annual installments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, * * * and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization installments thereof, provided that any increase in the debt incurring power of the city of

New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes." Then comes the final and important clause of Article 8: "The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants or any such city of this State in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city to be ascertained as prescribed in this section in respect to county or city debt." If this constitutional provision recommended by the Committee were adopted as it reads it would wipe out that limitation and instead of limiting the city of New York to a 2 per cent. rate, it might be raised to 3, 4 or 5 per cent. Consequently, my amendment, which I understand now the Committee is ready to accept, makes clear a differentiation between the supremacy of the constitutional provision and that of general laws by providing that every city shall have exclusive power to manage and regulate its own property, etc., subject to this Constitution; that means all the provisions, not merely the provision which relates to all the inhabitants of all the cities. Then it will read "and further subject to the general laws of the state" applying to all the inhabitants or applying to all the cities.

Mr. D. Nicoll — I thought your amendment was "subject to the provisions"?

Mr. Marshall — Yes, subject to the provisions of this Constitution, and subject further — that separates the statute from the Constitution.

Mr. Wagner — While you are on that subject, I would like to ask a constitutional question, if I may. We give here in Section 4 exclusive power to the municipality to manage, regulate and control its own property, business and local affairs. If we adopt your amendment, subject to the provisions of this Constitution, then the exercise of the powers I have just enumerated would be subject to the provision putting all legislative power in a Senate and Assembly and thus would not we limit to a large extent the exercise of these powers?

Mr. Marshall — No, the trouble about that question is this, the provision with regard to having legislative power vested in the Senate and Assembly is a general provision. This provision with regard to home rule is a particular provision, a special provision.

Mr. Wagner — But, whether it is general or special, are not these powers subject to that provision of the Constitution?

Mr. Marshall — Except as modified expressly in this provision.

We are expressly modifying the legislative power by giving certain legislative powers to the municipalities. And, reading those two clauses together, it is very clear what the interpretation would be. Now the next amendment that I propose is one which I think is equally important and that is to strike from line 14, page 4, and also from line 4, page 5, and from line 6, page 6, the word "business", so wherever there is to be found in juxtaposition in any of those cases the words "property, business or local affairs", the word "business" would be removed. Now the Constitution at present in Section 2 refers to laws relating to the "property, affairs or government of cities". Those three words were chosen advisedly for the purpose of dealing with all matters which could legitimately relate to the interests of cities. Now in this project we are changing that phrase. The word "business" is a new word injected into the Constitution, in so far as municipal affairs are concerned. Now I look with much suspicion upon the interpolation of this new idea as expressed in the word "business". What is meant by the word "business" as here used? If it is used in the colloquial sense, it might refer to any kind of business; in its legal sense it might refer to any kind of business. It certainly must mean something different from government. The word "business" cannot mean the same as "government", it cannot mean the same as "property", it cannot mean the same as "local affairs"; it therefore means something else. Now when we read the outgivings of publicists and of reformers, we find that the word is used advisedly in the sense of enabling our municipalities to emerge out of the status which they have heretofore occupied, of being governmental agencies of the State, of carrying on the affairs of government and dealing with those matters which are intimately related with the subject of government. They desire a municipality to become a business organization as well. They are striving constantly to enlarge the functions of our municipalities. Among various schemes which have been proposed, there have been those which relate to embarking in the business of a public utility corporation, the running of street railroads, the operating of electric light plants for the sale of electric light, or gas plants for the sale of gas. There have been those who have suggested entering upon various mercantile enterprises, the conduct of stores for the sale to the public of goods at reasonable or cost prices. There has been one enterprising gentleman in one of the cities of this State who has sought to empower his municipality to engage in the business of selling milk to the inhabitants, and with milk would go butter, cheese and buttermilk. There are those who think that it is within the power of the municipality to deal in coal or ice or any other subject of merchandise.

Mr. Schurman — Municipal lodgings?

Mr. Marshall — Yes, municipal lodgings. There is no limit to which these gentlemen that have these grand ideas will not go. Are we prepared in the year 1915 to embark on such a socialistic enterprise? I am not using the words in any invidious sense. Are we prepared to depart from the functions of government, the legitimate functions of government, and to enter upon the carrying on of business enterprises? Wherever the effort has been made in that direction, so far as I have been able to learn, it has not been successful. The city of New York has had one experience with regard to the ferry extending from the lower part of Manhattan to the county of Richmond; while that ferry under private control was a paying enterprise, it has been a very losing venture for the city of New York. Thousands and hundreds of thousands of dollars have been poured into it. If the city is to engage in business, it would mean that eventually a very large percentage of the population of the cities would be in the public service; they would be engaged in carrying on these different occupations and you would soon build up within every municipality a machine, a political machine, compared with which no one has yet in the history of our country succeeded in even imagining a structure of such magnitude. Now I should say that there is mischief latent in the use of this word "business." I am not speaking unadvisedly because, as I have been informed, when the distinguished mayor of the city of New York appeared before the Cities Committee, on June 22d, he was asked whether he believed that the city should have the power to institute or purchase its public utilities, to which he answered in the affirmative. And in answer to the question "Would that not give the city, if it was so inclined, the power to threaten in New York existing corporations?" the mayor said, "I don't think so. Of course, it is very hard to make any material grant of power without the possibility of having that grant of power abused, whether it be under legislative control or whether it be by Constitution. But what I personally believe in, if you really want me to make a declaration of it, is that the city should have the power to acquire such public utilities as its electorate see fit, acting through their representatives. And, personally, again, I have believed in the qualified control of those utilities lying entirely within the cities but I do not believe the municipal authorities would abuse that power at any great degree." Now these we have from the chief magistrate of the city of New York an expression of purpose, intent and policy. I am not interested in the question as to whether it would threaten the existing provisions. I am only interested in this question from the standpoint of the taxpayer; I am interested from the standpoint of one

who is a lover of good government and one who desires to see that government remain on the rails and not run "wild-cat" into every domain of business and of human activity and endeavor. I, therefore, trust that the Committee will see the advisability of eliminating this word "business." If this word is retained, however much I am impressed by the general plan of the Committee, I should feel it to be my bounden obligation to contest and fight against the adoption of this provision to the utmost of my power.

Mr. Wickersham — May I ask, is it your idea, Mr. Marshall, that by giving to the city the power to control its own business, it might be interpreted that thereby it would be empowered to embark in some commercial enterprise?

Mr. Marshall — Yes, it is. I think it is subject to that interpretation. In other words, coupled with all these other powers of adopting charters which would deal with this subject and changing its fundamental law from time to time, it requires no stretch of the imagination to find that they would adopt, or might adopt a plan of embarking in any of the kinds of business to which I have referred.

Mr. Wickersham — That would imply, then, would it not, that it was a part of the business of a municipality unless restrained, by some constitutional provision, to embark upon any commercial enterprise? Now, is not that contrary to the general trend of decisions both in this State and elsewhere? Is there any respectable authority in this State to sustain, as a general power, not incidental merely to the business of the municipality, the right of the city to embark on a commercial enterprise?

Mr. Marshall — Unfortunately, there is a tendency in that direction. The Court of Appeals in the case of the Sun Printing and Publishing Company against the Mayor of New York, in 152 N. Y., recognized it to be a municipal purpose, or a city purpose, to construct a subway and to own that subway for the purpose of facilitating the carrying on of railroad enterprises in the city of New York. That is a long step and my notion is that, in view of the fact that the city is to have the exclusive power to manage, regulate and control its own property, business and local affairs, that would not merely mean the property which is now owned, at the time of the adoption of this Constitution — the local affairs which are conducted, or in which it is interested at that particular time. But, in view of the fact that they have the right to manage, regulate and control their property, business and local affairs, and they may also amend their charter or any local or special laws relating to its property, business or local affairs, they may create from time to time businesses which they are not now engaged in and which they are not now prepared to engage in.

Mr. Wickersham — Will the delegate contend that such enterprises as the construction of rapid transit railways within the city for the transportation of passengers from one point of the city to another, to relieve the congested conditions existing in the city, was not a legitimate city enterprise, and would he wish to prevent the city from embarking on that kind of enterprise?

Mr. Marshall — In dealing with that matter, the court went to the fullest verge of the Constitution, and if you will read the opinion in that case, you will find that the sole reason which led the court to decide as it did, its *ratio decidendi*, was that the city was creating highways, subterranean highways, for the purpose of facilitating the transportation over those highways. That was by interpretation declared to be a city purpose. To-day, I am sure, no judge of the Court of Appeals would consider it a proper, legitimate function of a city to engage in the business of selling dry-goods, or clothing, or coal, or wood, or milk, or any similar commodity, but if you put this word "business" into the Constitution now, I venture the assertion that by no possibility could the court hold otherwise than that those occupations might be carried on by the city under the power thus granted. I cannot conceive of anything else that the word "business", as used in this connection, would mean, especially in view of the fact that effect must be given to every word used in the Constitution. We are not supposed to be engaged in tautology, or in using ornamental phrasing, or in employing rhetoric. Hence when this provision refers to "property, business, local affairs, government", these words present a distinct concept, a legal concept, not a rhetorical concept.

Mr. Wickersham — I take it that the delegate would not deny the power of the municipality to enter into the business of furnishing water and light to its own citizens.

Mr. Marshall — That has been decided as being a legitimate function of the city, because water and light are necessary, in the one case for protection against fire and for the usual purposes of a municipality, and light as well, for the purpose of illuminating the highway, and the furnishing of gas and light, in that connection, would be a mere incident.

Mr. Wickersham — In other words, what I started to put to the delegate is this: When the provision empowers a city to carry on its own business, isn't that necessarily limited to the legitimate business which a municipality can properly conduct within the four corners of the charter of any municipality, and does that for one moment open the door to the theory that a municipality can embark in the dry-goods business, or the business of selling newspapers? But isn't it by inference and by necessary interpretation, in connection with the volume of authority which has con-

strued the powers of municipalities limited to that character of business which is properly incidental to the existence and the conduct of a municipality, and isn't it a strained and forced interpretation to suggest that, by the use of that word "business", you are going to authorize a municipality to go beyond the exercise of the ordinary functions of municipalities, such as they have been recognized by the courts of the United States in a long line of decisions?

Mr. Marshall — It is a very long question, but while it was being put I had leisure enough to look through this clause for the purpose of ascertaining whether the language —

Mr. Wickersham — That is why I made it long.

Mr. Marshall — Which the gentleman has used, "the legitimate business" in which a municipality can engage, whether these words are in the Constitution. I do not find the word "legitimate" or "legitimately engage" in juxtaposition with the word "business". It is there in its blunt, brutal shape, and, as I have already stated, it is used in juxtaposition and contrast with the phrase "local affairs", words which are certainly strong enough to cover those legitimate matters of business in which a city may properly engage.

Mr. D. Nicoll — Mr. Chairman, does not the gentleman know that some years ago the Baltimore and Ohio Railroads were operating a line with ferry boats and that the city concluded to go into the business of transportation, and bought the ferry boats?

Mr. Marshall — I am woefully aware of that, because my taxes have increased in consequence.

Mr. D. Nicoll — And does not the gentleman know that that business enterprise now costs the city of New York a deficit of a million dollars a year?

Mr. Marshall — Hence these tears.

Mr. D. Nicoll — By striking out this word "business", I want to know if you would not imperil that enterprise?

Mr. Low — Mr. Chairman, I wanted to ask Mr. Marshall if he does not think that a municipal ferry is comparable to a bridge? The bridges over the East River which connect Manhattan with the boroughs of Queens and Brooklyn, they do not appear to cost the city anything from year to year, but they do cost the city the interest on the entire construction cost, which was about twenty-two million dollars. Now, the Borough of Staten Island cannot be reached by a bridge, but it is reached by a ferry — which is the first observation which I wish to call to Mr. Marshall's attention. The second is, that I think if the figures of the present rate of operation are looked into, it will be found, it seems to me, that the amount of loss is very much less than it was at the beginning, if there is any at all.

Mr. Marshall — In answer to this statement in the form of a question, I will say that I am not here to discuss this woeful experience of the city of New York. At any rate, that is now a local affair. I will not say it is a local affair of dishonor, but it is a local affair of bad judgment, and what I am trying to avoid is increasing the situation to such an extent as to have further business ventures which are even less kindred to the ordinary functions of a municipality than the conduct of a ferry. Assuming that there is a parallel between a ferry and a bridge, and between a subway and a highway. What I am considering is the question of going into other occupations; we will find the day when, if a check is not insisted upon, cities will engage in these various occupations to which I have referred. At all events, if the people shall ever come to the point of desiring to occupy themselves with other ventures, let that be made the subject of an independent proposition in an independent amendment to the Constitution. But let us not, with our eyes open, allow the entrance into our system of such an insidious feature of the word "business", where it does not belong, and where it is not needed.

Mr. Sanders — Mr. Chairman, would the gentleman say that a provision of a charter of a railroad corporation authorizing it to manage its business, would authorize it to engage in mercantile business?

Mr. Marshall — That is a question which I could not answer without seeing the remainder of the charter.

Mr. D. Nicoll — In the business of conducting hotels, for instance.

Mr. Marshall — They sometimes do, because they are sometimes given that power.

Mr. Franchot — Mr. Chairman, if I may ask the gentleman a question. Would not your objection be met by retaining the phrase "property affairs and government", which is in the present Constitution?

Mr. Marshall — Unquestionably. I agree with Mr. Franchot entirely. What I am criticizing is the unnecessary introduction into the Constitution of the word "business," when there is no need for it in anything at present existing in our public life, and when these three words which have passed muster for the last twenty-five years, and which cover every legitimate interest of a municipality, are sufficient for the purpose. I should much prefer, too, a favorable consideration of the enumerated powers of Mr. Franchot's project, to this dangerous feature which is injected into this cities article by the use of the word "business". At least then we would know what we could do and what we could not do. Here we do not know what might result from the use of

this word so unnecessarily introduced and which, to my mind, does not increase the harmony of the general features of the scheme.

Mr. Parsons — Could you accomplish just what your object is by striking out the word “business?” Would you not have to strike out the phrase there and insert the language in section 2 of Article III? In that section the language is, “Laws relating to the proper affairs or government of cities;” but as the language here is directed, it is business or local affairs. It might be an affair of a city which does not come exactly within the word “local,” for instance, water supply.

Mr. Marshall — That is a proper —

Mr. Parsons — But the management of it, is that not managing affairs?

Mr. Marshall — “Managing, regulating and controlling its property.” Those three words relate to all of these three terms.

Mr. Parsons — May I suggest, then, that if that is your suggestion, you get nowhere, but that the management may be of anything which it chooses?

Mr. Marshall — It has to be property which it can legitimately acquire. It would not justify a city in going into a business. You are inviting the city to engage in business.

Mr. Parsons — Then the business must be business which you can legitimately do.

Mr. Marshall — But with the word “business” in, by this method of government by charter, under the management of a charter, conducted with some catchwords or phrases, of any man doing his own business in public welfare stores, or something of that sort, why, you could amend your charter so as to engage in such a business by constitutional authority. I have said what I have said with full confidence in the soundness of the policy. I consider it bristling with danger. Judge O’Brien, in his very interesting argument yesterday, called attention to the fact that in the Constitution of the United States there were the few words giving to Congress the power to regulate commerce, and that power to regulate commerce has included within it by interpretation almost every imaginable activity of the human race. When used in 1787 in the Constitution, there were no railroads, there were no steamboats, no telegraph, no telephone, and no cable, and yet under that grant of power to regulate commerce, there has been included regulation of all of our means of transportation, of inter-communication, and the end is not yet, because the Supreme Court of the United States, at every session, is building up, building up a structure based upon these few words, which seems to comprehend almost every mercantile and commercial activity to which the human race is capable of giving birth.

Mr. Schurman — I would like to ask Mr. Marshall whether, in his opinion, the city of New York has suffered in the performance of its legitimate activities from the absence from the present Constitution of the word "business."

Mr. Marshall — No, not at all. If the city of New York and its officials would confine themselves to the legitimate duties of properly looking after the property, local affairs and government of the city, there would be no need for them to seek new worlds to conquer. They have got business enough for a summer's day, at least.

Mr. Wickersham — I would like to ask the gentleman if it is not the purpose of the incorporation of a municipality that it may conduct the affairs and business of a municipality, whatever they may be, from time to time, in carrying out the legitimate object and aim of the formulation of a municipality?

Mr. Marshall — What is "legitimate," if I may be permitted to ask?

Mr. Wickersham — It would be difficult to define in words, but whatever the legitimate aim of a municipality may be, must it not be understood that a municipal corporation has whatever powers are expressly created in order to accomplish the legitimate objects of its incorporation? In other words, my question is, does a municipal corporation differ in that regard from any other corporation? Are not corporations created for certain purposes? Municipal corporations are, as I understand, for the government of people living in a certain prescribed area, under existing conditions, and whatever legitimately belongs to the conduct of that local government, in the conduct of its affairs, attainment of the objects of healthy municipal life, are incidental powers to the municipality. If you leave out the word "business," do you qualify those powers in the slightest degree? Does not it have all the force of its creation as a municipal corporation, the power to carry out whatever business is incidental to its existence?

Mr. Marshall — Once more resolving myself into a Yankee, which I am not, I will ask the gentleman to define what is the legitimate business of a corporation? I cannot conceive of anything that is legitimate that you get beyond the functions of dealing with and managing its affairs and its government. The gentleman seems to think that there is no difference in principal between a municipality and any other corporation. The difference is as wide as the continent. A municipality is a public corporation. A business corporation is a private corporation. The rules and principles which apply to a public corporation are entirely different and distinct from those which apply to a private corporation. In one sense, it is a delegation of government. In

another case, it is merely the granting of a franchise or permission to a number of people to carry on the business that a single individual or a number of people aggregated in a partnership might carry on; and so long as it is not contrary to the moral law or statute law, it would be legitimate provided that it comes within the four corners of the grant of the charter. So far as a public corporation, however, is concerned, a municipality, they are dealing with the subject of government and the affairs which are incident to the government, local affairs and property belonging not to a small group of people, but to all the people gathered together in a municipality or a locality. Entirely different principles must and should apply.

Mr. Wickersham — Are there not two functions combined in every municipality, the exercise of the delegated sovereign power, and the exercise of what may be called the private or proprietary power, and does not the same rule of construction apply to a corporation in the exercise of the latter powers that applies to any ordinary private corporation in the exercise of power?

Mr. Marshall — Not the same rule of construction.

Mr. Wickersham — Perhaps the property rule, then, as applied to a private corporation. Take, for example, the business which the city of New York is carrying on in owning and renting piers and wharf properties: a very large business in which it is involved, and investing an enormous sum of money —

Mr. Marshall — That is not a business, if I may interrupt.

Mr. Wickersham — — in its private capacity, real estate and water rights appurtenant thereto, and renting out as any other landlord. Would the delegate say that is not a business?

Mr. Marshall — No more a business than would be the act of my leasing a house or a barn that belongs to me; that is merely an incident to the ownership of property. The city of New York owns the water front and owns the piers, and it rents out those piers as its property, just as it might a piece of property which it had acquired by tax sale. That is not a business. Unfortunately, the same people who are stretching out for power within the municipality have succeeded in amending the Constitution in putting into it excess condemnation provisions enabling them to condemn and buy property more than is actually required for a public work, and then set forth in what might be called the real estate business. You will sometimes see on the City Hall a sign, "Real Estate Agent: Property Acquired in Excess Condemnation Proceedings." That business that followed in the wake of the Staten Island ferry is an object lesson for all times. Would that it might come soon, because the sooner we taste the bitter sweets of engaging in business, the better it will be for our communities and our municipalities.

Mr. Wickersham — Because I am trying to develop the idea of business engaged in. Isn't it a fact New York has gone into the business of buying water front property and leasing it, and isn't that a business, precisely to the extent that the Astor Estate is in, the business of improving, building and managing real estate?

Mr. Marshall — I do not so consider it. It might in one sense be called that, because it is carried on on a large scale. It is entirely unnecessary to put the word "business" in, to cover that, because it is a right incident to the control and management of property. Why do you invite peril by putting in this word "business", is the question I am putting to this convention.

Mr. Wickersham — What I am trying to get at is the additional power which you are conferring upon them that you think is being conferred upon a municipality by the use of the word "business" and I am trying to develop the fact that incidental to the powers of a municipality is the right to enter into such business, as far as it is within the general grant of municipal powers.

Mr. Marshall — Mr. Chairman, let me ask questions now. I think turn about is fair play. Suppose the people should be aroused by the idea that there had been private banks failing on the East Side resulting in large losses of money, and municipal banks should be organized? Suppose the people find their rates of insurance higher on their property than they ought to be, and they then should engage in municipal fire insurance; and suppose there should be an outcry, as there was, against life insurance companies a few years ago, when that investigation was made into them by Governor Hughes, and we find that our premiums are too great, and it might be argued that the lives in New York city are longer than those in the interior of the State, and that therefore the business could be conducted more prudently and advantageously in the city of New York, and suppose the people should say that Macy's and Altman's and other department stores are making too much money and that the people should have the benefit of that, and that they could get better rates than they can now from those stores, and they could get their calico and their groceries and other goods cheaper, would you say that the city should go into those different kinds of businesses? But if you put into the Constitution this word "business", don't you open the door to these professors — I say that with all due respect to some professors — but don't you open the door to some of these professors who think it is the fashion to upset and do away with everything that is time-honored, to make a new deal and to start as though we were starting upon a new Utopia? Would there not be men, I could name them by the dozen, their utterances are flashed over the wires from one end

of the Union to the other, who would urge you to embark upon those enterprises, co-operation, collectivism and all those beautiful schemes which we hear of which are expected to be catchwords and talismans for the purpose of curing every possible ill that flesh is heir to — men who come here and tell us to abolish the due process of law for the protection of life, liberty and property, and who are prepared to embark upon the craziest scheme that has ever entered into the mind of a lunatic.

Mr. E. N. Smith — I call your attention to the phraseology, "management of its business."

Mr. Marshall — Yes, that is, "its business."

Mr. E. N. Smith — Are you aware of the fact that that same clause is in practically the charter of every city in the State to-day?

Mr. Marshall — I don't think it is. You may have it in Watertown.

Mr. E. N. Smith — This expression is in almost every charter of every city, the management of its business.

Mr. Marshall — Well, I don't want it to get into the Constitution if I can help it.

Mr. Wickersham — In answer to the question which the delegate put to me, I will say that nobody but a lunatic would ever construe the phrase "its business" in the charter of a municipality to embrace the power you describe.

Mr. Marshall — I don't know about that. I don't know about that. We have had times in this country when any kind of a crazy scheme has received very respectable endorsement and backing. It was only by a miracle that we did not adopt the "16 to 1" idea. And it was only by a miracle that the Greenbackers did not succeed at one time in imposing their theories upon our entire country, to say nothing about a community. And it was only by a miracle that Dennis Kearney, of sand-lot fame, did not succeed in his efforts which would have knocked the city of San Francisco in a cocked-hat. And I don't know what some of the distinguished gentlemen might not do even in the city of New York, when most of its good citizens are playing golf or are engaged in other enterprises, whereas, the people who are heroes of the Hustings might go abroad and preach to listening ears these doctrines. Don't be so sure that this may not be engrained into our public life at some time. I hope I may not be accused of "sandlotism," but I shall indulge, at least in warning, and I hope it will not be a prophecy.

Mr. Wickersham — Of course, the delegate's warning will go throughout the land, but let me call your attention to the fact that these words would have to receive judicial construction, and what we are guarding against is not sandlotism or popular uprising, against which no language would prevail, but it would have to

rest on the solemn common sense of the American people. We are speaking now of language to be submitted to judicial interpretation, and I ask if the delegate sincerely thinks that any court in this State, any Court of Appeals in this State, would construe the words "its business" in a municipal charter to embrace any of these practices and agencies he speaks about?

Mr. Marshall — A very estimable gentleman, Mr. Dooley, in one of his immortal utterances said: "That the Supreme Court follows the election returns."

Mr. Wickersham — Mr. Chairman, the delegate does not believe that, does he?

Mr. Marshall — No. Now, in reference to what Mr. Smith has said about the charter of the city of Watertown. The city is one of the most beautiful spots of creation, and if I had the ability of the late Parker Knox, to indulge in a rhapsody, I should tell you what it is. The charter is different from the language which is to be found in chapter 247 of the Laws of 1913, which is an act to amend the General Cities Law, in relation to the powers of cities, and which was calculated to create a sort of home-rule measure, and there we find in section 19 these words: "Every city is granted power to regulate, manage and control its property and local affairs." There is no word "business" used in that connection. And it is also true that it follows with a grant of power, an enumeration of powers, coupled with the phrase that: "No enumeration of powers in this or any other law shall operate to restrict the meaning of this general grant of powers or to exclude other powers comprehended within this general grant"; none of which indicate any desire on the part of the framers of the act to permit the carrying on of any business,—

Mr. Weed — Do you not find in that law to which you have referred, in subdivision 19 of section 20, this phrase: "To regulate the manner of transacting the city's business and affairs?"

Mr. Marshall — I do find those words, but they are to be read in connection with the general grant of power which is declared to be controlling, and that general grant of power relates to the regulating, managing and control of property and local affairs. So in that connection the word "business" is merely used as relating to the subjects of general grant.

Mr. C. Nicoll — In this general grant of power contained in section 19, you will notice that that section we had under discussion before, it simply provides for a grant to manage, regulate and control its property and local affairs. No such word as "business" appears. Are you aware that in that general grant of power and as an incident thereto it is in the same bill provided that the city shall have the right to establish, construct and maintain, operate,

alter and discontinue bridges, tunnels and ferries and approaches thereto, under section 9, and in section 16 to establish institutions and instrumentalities for the instruction, enlightenment, improvement, recreation and welfare of its inhabitants, by the city.

Mr. Marshall — I find that, but I don't think that that meets my question, I am talking about a general grant of power, such as you have in the Constitution, and that grant of power deals solely with that subject, solely with the subject of managing, regulating, and controlling local affairs. These two subjects you have called attention to, are not, in any way — are limited and circumscribed, whereas the word "business" is the most comprehensive word which can be used, and within its limitations includes any kind of business that it is possible to engage in.

Mr. C. Nicoll — Including those you mention?

Mr. Marshall — Yes, sir.

Mr. Parsons — As a practical matter, could not the activities of the city be governed by the provisions of Section 10 of Article VIII, relating to the incurring of indebtedness which provide that no city may incur an indebtedness except for city purposes?

Mr. Marshall — Then your answer is that if the city should ever be fortunate enough to get out from under its present burden of debt, why until that time came, it might not have money to engage in this business, but New York city is not the only city in the State. I think there are some cities which are fortunate enough to be not so burdened with indebtedness, and in this case this language applies to all.

Mr. Parsons — In the use of the word "business," is it not fair to assume that the court would still limit that to business for city purposes?

Mr. Marshall — I cannot assume any such thing.

Mr. Franchot — Mr. Chairman, will the gentleman yield for a friendly question?

Mr. Marshall — Yes, but these are all friendly questions.

Mr. Franchot — Is it not your contention, Mr. Marshall, that the term "local affairs" would ordinarily include such incidental business as the city must engage in, in order to manage its affairs, and that by the use of the additional term "business" confusion is thrown around the subject.

Mr. Marshall — Mr. Franchot has expressed my idea exactly. I have tried to emphasize that idea, and I think his way of phrasing it is a very valuable addition to my efforts along that line.

Mr. Schurman — I understand from Mr. Wickersham that New York city has engaged in the purchasing and leasing of real estate for what has been termed its business activities. I want to know if the warrant for such a business is to be found in the

existing Constitution or law, which provides that cities shall manage, regulate and control their own property and local affairs?

Mr. Marshall — That is the only language which has ever appeared in any Constitution which relates to cities at all.

Mr. Schurman — If we put in the word "business", we contemplate an addition, or an extension of the activities in which the city is engaged.

Mr. Marshall — You acutely point out a new line of thought; an activity, one which is not needed for carrying on any of the city affairs that have been carried on, and which is merely an invitation to embark upon an entirely new system and theory of local management and government, and in fact, no one of which is included in the term "government", because it is an addition to government, it is an addition to its management and control of local affairs, it is an addition to the management of its property; it is, in fact, the carrying on of a business.

Mr. Byrne — I am sorry to be another one to interrupt you. On line 17 it says: "Such powers shall be deemed to include among others", and then it goes on to state the power and grant and so forth. Have not the courts held that where a class is defined, for instance, the case, I think, where they said pigs, cows and other animals, that it meant animals of a like kind, which would not refer to wild animals, and, therefore, having pointed out the kind, among others, don't you think that the courts would then hold, when they came to interpret it, that it meant things of that character, and not the business of selling milk, butter and cheese?

Mr. Marshall — I don't think so.

Mr. Byrne — I do.

Mr. Marshall — I do not think so. In the first place you lay down the proposition that cities "shall have exclusive power to regulate and control its own property, business and local affairs", and then we say that this "power shall be deemed to include among others". It does not merely say "include" but, "among others", and indicates that out of the universality of powers conferred, for a certain reason, certain powers are mentioned, and when you refer to line 11 of page 6 of this measure, you will find a reason why that subdivision was made, and why there was any reference to those ideas at all was merely to deal with amendments which related to a matter specified in that particular subdivision, and which did not change the framework of the government. That is, therefore, the purpose. I am very sure that the framers of this provision would not for a moment consider that this subdivision "a" is exclusive, or that it points out the only character and nature of powers, the sole character or class

of powers which may be exercised by a city, under this exclusive power, to manage, regulate and control its own property, business and local affairs. Now, I rose to say only a few words in explanation of my own amendments and I find that I am coming to be a monopolist.

Mr. Wagner — Do I understand you to say that the enumerations of powers in subdivision "a" do not in any way limit the powers granted in Section 4?

Mr. Marshall — No, they are merely inclusive; they are not exclusive; they do not define, or attempt to define in any way; they merely point out for the purposes of subsequent elucidation a certain class of power.

Mr. Wickersham — I would like to ask the delegate what is the use of enumerating these things as included in a general grant of powers?

Mr. Marshall — There is a question which I cannot answer because I am not even imputing power to this provision.

Mr. Wickersham — Without imputing relations to it of any kind, permit me to ask what in your opinion would be the disadvantage?

Mr. Marshall — I do not say there would be a disadvantage. On general principles I should consider it always a matter to be carefully considered as to whether or not there should be in any constitutional provision any enumeration of power. There is always a possibility of trouble. The more words you have in your constitutional provisions, the more lawsuits there are for lawyers, and we have in this provision enough prospective litigation to make the heart of almost any lawyer happy. I am trying to prevent it. That is my function here.

Mr. Wickersham — I hope the delegate does not overlook the fact that there are a large number of deserving lawyers in this assembly, and speaking in their behalf, would it not naturally be suggested that the enumeration of these included powers would throw some light on the general intention of the framers of the measure in their general grant of powers; as a matter of interpretation, wouldn't a court in case a dubious question were raised in the construction of the grant of power, look to the enumerated powers for guidance in determining the character of general powers sought to be conferred.

Mr. Marshall — Providence alone knows what will determine the minds of the courts when it comes to interpreting provisions of this act. I should hate to express an opinion upon that subject. My notion is that the only proper course to pursue is to be extremely careful as to what we say and how we say it, and if we are using superfluous words to cut them out, and I believe

that much more harm is done by a multitude of words than by a paucity of words.

Mr. Wickersham — Mr. Chairman, will the gentleman yield for another question? I make this request seriously.

Mr. Marshall — I am very serious in everything that I have said.

Mr. Wickersham — We have all been very serious but in a lighter vein, but I would like to ask one question. Suppose the word "business" should be stricken out. Does the delegate think that that would leave the municipality with that full control over its legitimate municipal functions as the courts may from time to time interpret those legitimate municipal functions would be, and would the mobile of the word "business" in any way impede or obstruct the municipality in the performance of whatever functions the courts from time to time might hold to be properly included in that designation?

Mr. Marshall — I hold that the exclusion of the word "business" would not in any way harm or injure a city in the exercise of what should be its proper and legitimate function.

Mr. Wickersham — And what a court would hold?

Mr. Marshall — And what a court would hold to be a proper and legitimate function.

Mr. Low — And not what it already has in its charter.

Mr. Marshall — It would enable the city to have acquired property, as for instance, of ferries, to run those ferries, even at the loss of another million of dollars, and to lease its wharves or any property that belongs to the city, because that power goes under the phrase "control of its property". I will now proceed to other phases of these amendments.

Mr. Quigg — I raise the point of order that it is obvious that a quorum is not present to do business.

Mr. Marshall — Mr. Chairman, may I suggest to Mr. Quigg, even if we may not have a very large number of people here, what we are saying will go into the Record. What I have said has been really directed in the most friendly and brotherly spirit to the Committee on Cities, with the hope and expectation and confidence that they will be aided by whatever any of us may say on this subject.

Mr. Quigg — Mr. Chairman, I think it is a shame that the Convention has not been here to hear this debate.

Mr. Wickersham — Mr. Chairman, it may be a shame but I hope that the delegate will withdraw his point. He is not assisting the work of this Convention by making it.

The Chairman — The Chair would suggest that the gentleman would withdraw his point and permit the discussion to proceed.

Mr. Wadsworth — The gentleman is not aiding the work of this Convention by making such a point.

Mr. Jeter — That is a matter of my judgment as well as yours.

Mr. Wadsworth — Mr. Chairman, it is the judgment of this body of earnest and thoughtful men who are engaged in an intellectual discussion of this measure, and I hope that the delegate will not insist upon his point, because I think it is contrary to the judgment of the gentlemen here assembled.

Mr. Lorton — I think nothing could be more helpful or educational than the work we are engaged in, and an interruption at this point and at this time would to a very large extent leave us without that conclusion and maturity of thought that will come if we are allowed to continue this discussion until we have concluded the consideration of this branch of the subject.

Mr. Low — May I call the attention of the delegate to the fact that a very large proportion of the Committee on Cities are present and are hearing the discussion and I hope profiting by it, and I would be very much pleased, with others, if he would withdraw the point of order.

Mr. Quigg — I will withdraw it, Mr. Chairman, for the present.

The Chairman — The gentleman withdraws his point of order; Mr. Marshall will proceed.

Mr. Marshall — Mr. Chairman, these provisions which I have referred to are in my judgment fundamentally important. There is much that may have to be said hereafter by some of us with regard to the general plans of the Committee. I am free to say that I consider it a clear and logical plan, and I think that it is a workable plan, subject, of course, to these amendments. It lays down two general fundamental principles. One is that as to matters which relate to the property and local affairs,— I will exclude the word "business" now — of a city, the city itself shall have exclusive power; it may make additions to the charter, it may amend it subject to the provisions which limit the exercise of that power which are inserted in the provision. Then there is the other idea, the second phase of the subject, which deals with the government of cities, which deals with what has been referred to as the framework of its government. Whether that phrase shall be retained or not is a question as to which we should give very careful thought, although we, all of us, have a sort of feeling as to what is intended even though we may not be able in accurate words or language to express what that feeling is. At any rate, it is a differentiation between the management of the property or affairs of a municipal corporation and its government. The one may relate to the corporate, as distinguished from governmental, affairs of the municipality, whereas —

Mr. Franchot — Do you not consider that a definition of that kind would immensely narrow the grant as defined by the interpretation by the courts hereafter?

Mr. Marshall — I think it would.

Mr. Franchot — You are, of course, aware that the cases heretofore, in defining the distinction between what a city does in its governmental capacity and what it does in its private or proprietary capacity,—in making that distinction, very few things have been considered to fall within the latter class.

Mr. Marshall — I recognize that, and I do say that, in that sense, there is a limitation, a narrowing of the power. Of course, we cannot, however, forget this one fact, that, as to the government of a city, matters which are purely governmental, it is exercising a delegated power of the State. Normally, the State governs all within its territory directly, and if a State were small enough it would not require any civil divisions at all — Counties, towns, cities or villages. The State as one corporate, sovereign entity, would rule all and do all. But in view of the fact that our territory is large and our population is great, and that the interests in one part of the State are different from the interests in another, in the exercise of its governmental power, the State delegates those powers to the municipality. Yet, in so doing, it is merely parceling out a section or sections of its sovereign power, and that sovereign power is vested in the great departments of the State government, and, so far as lawmaking is concerned, it is vested in the Legislature—the Senate and the Assembly. Now, I can see a very good reason for having one rule apply to the exercise of those governmental functions, and another rule to apply to those proprietary, if you please, functions, or those functions which relate to property and local affairs. And even that distinction may be arbitrarily varied from by adding to the powers to be exercised under the phrase “property and local affairs,” such governmental powers of the police department, the health department, and possibly education, although that is one of the questions which we have to deal with hereafter. At any rate, there is a legitimate grant for adding to the consideration of these local affairs the power to deal with the police, fire and health departments.

Mr. D. Nicoll — I want to ask the gentleman a question with respect to his interpretation of the amendment in relation to a certain thing which occurred in the city of New York some years ago. You may remember it, and I want to know how that subject was treated of here. The Board of Aldermen of the city of New York had, as you know, for many years, considerable legislative power. They were the local authorities of the city of New York.

The Pennsylvania road wanted to come to the city of New York, and they had to obtain the consent of the local authorities, then the Board of Aldermen. The Board of Aldermen dithered with the Pennsylvania road. They had an argument on the question and could not agree. Thereupon, those who were interested in having the Pennsylvania road come to the city of New York started in to create a public opinion for the purpose of taking away from the Board of Aldermen their legislative powers and conferring them upon the Board of Estimate and Apportionment. That was purely a governmental function.

Mr. Marshall — Undoubtedly.

Mr. D. Nicoll — That is an extreme case of going to the Legislature for the purpose of changing the government of the city when desired. Now, how is that restrained by this article?

Mr. Marshall — It is not restrained.

Mr. D. Nicoll — Not restrained?

Mr. Marshall — In other words, the whole theory of this provision, as I take it, is that, so far as such a change in the government of the city of New York is concerned, it would be necessary to go to the Legislature. Before such a law could be passed, the locality itself, even the people of the locality by an amended charter could change that structure of government, that framework of government which relates to the powers of the Board of Aldermen as distinguished from the powers given the Board of Estimate and Apportionment.

Mr. D. Nicoll — Now, do you mean to say that if the people of New York had a convention and adopted a charter and gave legislative powers to the Board of Aldermen, the Legislature, notwithstanding, could take those powers away and confer them on the Board of Estimate and Apportionment?

Mr. Marshall — Under this system.

Mr. D. Nicoll — Under this system. If that is the case, you might as well abandon it. You haven't got anywhere.

Mr. Marshall — That would deal purely with a governmental affair, but in such a case as that the bar of the suspensory veto still exists. That is retained. A bill giving to the Board of Estimate and Apportionment the power to grant franchises previously residing in the Board of Aldermen, would have to be submitted to the mayor of the city of New York, and if he disapproved it, it would not be a law unless the Legislature overruled his veto.

Mr. Wickersham — Would not that be a change in the framework of the government?

Mr. Marshall — It would.

Mr. Wickersham — Therefore it would fall within the provision that "Every such amendment which relates to a matter

specified under subdivision 'a' above set forth, and which does not change the framework of its government" — I am reading from page 6. This would change it.

Mr. Marshall — It does not change the framework.

Mr. Wickersham — But I say, reading the contrary to that, it would change the framework of government.

Mr. Marshall — If it would change the framework of government, then it cannot be exercised under this home rule power.

Mr. Latson — May I suggest, I think it was the intention to provide that such a change as has been indicated by Delegate Nicoll would be accomplished through legislation in the Board of Alderman, concurrent legislation in the Board of Estimate and Apportionment, and concurrent approval by the Mayor, with a delivery to the Legislature to await its approval or non-approval. If for a period of sixty days the Legislature was silent, this concurrent action of the three branches of the city would become operative. I think that was the intention. That is made more clear by the introductory words on page 6, lines 4, 5 and 6: "The legislative authorities of the city may enact amendments to the charter or to any special or local laws, affecting the property, business or local affairs of the city." That, again, excludes the government.

Mr. Latson — Mr. Chairman, may I direct the delegate's attention to line 16 of the same page, to be read as a part of that?

Mr. Marshall — That intention may be there, but I cannot see it. Please let me explain this language. You see, as it now reads — and that calls for one of my amendments — you say that "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs." Now there is a specific grant of power. That excludes government. Then it continues, "Such power shall be deemed to include among others:" those which are specified in subdivision "a", and then comes sub-division "b". Why subdivision "b"? I do not know, because it is not a logical subdivision, but for convenient dividing up of the sentences they call it "b". It reads: "The power, as hereinafter provided, to amend its charter or any local or special law relating to its property, business or local affairs." Then follows provisions for the exercise of this power, that is, by a general election or by the exercise of certain powers of the legislative authorities, but all those changes, whether at an election under a revised charter, or by virtue of amendments to the charter or existing laws made by the legislative department of the city, are limited and circumscribed by the introductory words, "The power, as hereinafter provided, to amend its charter or any local or special law relating to its property, business or local

affairs." It does not include government and therefore it excludes any amendment with respect to the subject of government, jurisdiction over which primarily is retained in the Legislature, subject to the suspensory veto.

Mr. Low — I would like to make a brief statement of fact, and then discuss the question as it affects the proposal.

Mr. Marshall — Perhaps I might take a rest in the meantime.

Mr. Low — Reference has been made to the granting of the Pennsylvania charter. That was acted upon by the Board of Alderman and it was that in connection with that matter that the transfer of legislative authority as to franchises was made from the Board of Aldermen to the Board of Estimate. It was necessary to come to the Legislature in connection with that grant because it was essential to give a perpetual franchise to make the project practicable and that was impossible under the city's charter as it then stood. That was the motive for coming to the Legislature. There was one power which the Board of Aldermen had at the time which was transferred to the Board of Estimate in that connection and that was the power to change the city map. The franchise was presented to the Board of Aldermen and it was granted by them or with their concurrence. So much for that fact.

Mr. Parsons — Is it not true that the Pennsylvania franchise was not granted by the Board of Aldermen until late in November or December or until after the agitation to which Mr. Nicoll alludes had been started which looked towards taking from the Board of Aldermen its power to grant franchises? That is my recollection.

Mr. Low — Well, the dates, Mr. Chairman, are not sufficiently clear in my mind to answer. The fact is that the Board of Aldermen did act upon the franchise and did grant it. Now in regard to the bearing of this amendment on the transfer of such powers from the Board of Aldermen to the —

Mr. D. Nicoll — Will the delegate yield? I think the delegate is in error but it is of no consequence whether he is right or I am right. I am only using that instance as illustrating the question of the governmental side.

Mr. Low — I quite understand that, Mr. Chairman.

Mr. D. Nicoll — Only as an illustration.

Mr. Low — That I am coming to, but with all respect, I think my memory is correct. I was mayor at the time and was very closely connected with the whole transaction and it has been a very great source of pleasure to me to know that the franchise was granted through the Board of Aldermen during my term. Now, Mr. Chairman, if I may have the delegate's attention, I would

like to answer what he has in mind — how this plan would affect such a thing. If the delegate will notice clause “C” on page 5, gives to the city as a part of its exclusive power, the power to amend its charter, etc. Therefore no amendment to the charter of the city could be made by the Legislature except by request of the city. In other words, the initiation of such thing must come from —

Mr. D. Nicoll — What line is that?

Mr. Low — That is on page 5, line 3. So the Legislature would have no authority whatever to amend the charter of the city of New York, or any other city, except upon the initiative of the city itself. Now if the gentleman will turn to page 3 —

Mr. Franchot — Mr. Chairman, if I might be pardoned for interrupting just at that point, I would like to ask the delegate this question, whether it was not understood among the members of the Cities Committee that the meaning of that language in subdivision “b” was that the city should have power to amend its charter or any local or special law, in so far as the charter or local or special law relates to its property, business or local affairs, and in that respect only.

Mr. Low — It seems to me, not. I think the grant of the power to make or amend the charter of the city is exclusive, but I was about to call the attention of the Convention to page 3, to the clause which we have used in defining a special city law. That reads, as presented by the Committee: “Laws relating to the government of cities and applying to less than all the cities of the state without classification or distinction and not within the powers granted to cities by this article are defined for the purposes of this section as special city laws”. Now the purpose of that was to preserve to the city, among other things, the power to make and amend its charter, so that no city charter could be made or amended except upon the initiative of the city.

Mr. Marshall — Is it not a fact, however, that the amendment of the charter relates solely to the subject of its property, business or local affairs and not to its government? I do not know what your intention may be; I am merely interpreting the language which is to be found here.

Mr. Low — Of course, the question of the language, I admit, Mr. Chairman, is very important and Mr. Wickersham has presented another form of that language in the hope of making more clear what was intended, I suppose, by the Committee. His proposal is, “Laws not within the powers of cities granted by this article and affecting the government of cities in matters of general State concern, but applying to less than all the cities of the State without classification or distinction, are defined for the

purposes of this section as special city laws." In other words, I think it was distinctly the purpose of the Committee on Cities to do two things; in the first place, to give to the city the absolute initiative as to the amendment of its charter and the making of a new charter, so that the Legislature could neither make nor amend the city charter in terms except at its request. Now, if there be any matter as to which the city is acting, if you please, as the agent of the State, a matter of State concern as to which the State feels that it ought to pass a special law, it will have the authority to do that but subject to the suspensory veto. That is the idea, I am sure, that was in the mind of the Committee.

Mr. Marshall — The question really relates to the language of Mr. Wickersham's amendment, and I should prefer to have him explain the language that he uses but I should like to get your interpretation of it, as to whether you understand that under that language it would be within the power of the city, through its legislative department or as the result of a public election, to change the general structure or framework of its government? I am using those phrases as they are used colloquially and not for the purpose of making any accurate definition.

Mr. Low — You are speaking now of amendment No. 1?

Mr. Marshall — No, Mr. Wickersham's.

Mr. Low — I am referring to amendment No. 2.

Mr. Marshall — I am referring to amendment No. 2, also,—
"Laws not within the powers of cities granted by this article and affecting the government of cities in matters of general state concern."

Mr. Low — What was your question?

Mr. Marshall — My question was whether you considered those words, "government of cities in matters of general state concern," would apply to the structure of the government or the framework of the government in a general way; as to whether a change may be made, for instance, from the present system of having a mayor and a board of aldermen or a common council to a commission form of government, or a change from giving the legislative or franchise-granting powers to the board of aldermen, to the board of estimate and apportionment, and the like?

Mr. Low — I should think not, Mr. Chairman, because all of those things would involve changes of the city charter. My understanding is that the Legislature cannot change the city's charter, if this were adopted, except by the initiative of the city.

Mr. D. Nicoll — Will the gentleman yield? You say "except upon the initiative?"

Mr. Low — Yes.

Mr. D. Nicoll — I just want to understand, because I cannot

make it out. You mean that under the present provisions of the Constitution any one wanting to change the charter, the city or any one else, could go to the Legislature, pass a bill and then have it sent to the mayor, and, unless vetoed by the mayor, it would become a law?

Mr. Low — That is the present scheme.

Mr. D. Nicoll — That is the present scheme? Does the scheme continue just as it is?

Mr. Low — I should say not. I should say that it was absolutely changed.

Mr. D. Nicoll — How changed?

Mr. Low — It is changed by giving to the city exclusive power to make and amend its own charter.

Mr. D. Nicoll — That is changed then by the provisions of Section 4?

Mr. Low — That is changed by the provisions of Section 4.

Mr. Marshall — In my judgment, it is the very converse of what Mr. Low suggested.

Mr. D. Nicoll — What?

Mr. Marshall — It is the very converse of what Mr. Low suggested is accomplished by the language of Section 4, and even Section 3, as proposed to be amended, does not solve all the questions.

Mr. Quigg — Mr. Low, suppose a bill were introduced after the passage of this, were introduced into either House, do you mean to say it could not be considered?

Mr. Low — If it amended the charter of the city, I should think it would be clearly unconstitutional unless it came up from the city with the approval of the Board of Aldermen, the Board of Estimate and Apportionment and the Mayor.

Mr. Franchot — Are you aware of the implications of that construction, its effect upon the power of the city still by amendments to its charter to do anything with regard, for instance, to that which we all admit is of State concern, namely, education, in that the regulation of matters which will hereafter be considered to be of State concern is now almost entirely in the charters of cities? So that if the Legislature could not change the present charters of cities with respect to matters which will be held of State concern, it would be utterly powerless to take care of matters of State concern under the provisions of Section 3 of this Proposed Amendment? It seems to me that the conclusion — I would like to ask the gentleman's opinion — that the conclusion is necessary that the power to amend the charter conferred upon the municipality is limited to amendments of those provisions of the charter which relate to and regulate its property, business and local affairs.

Otherwise, haven't you tied the hands of the Legislature absolutely by this provision?

Mr. Low — It does not seem so to me, Mr. Chairman, in the slightest degree. I am very sure that the intention of the Committee on Cities was to make it impossible for the Legislature to amend the charter of a city except in the method suggested, upon the initiative of the city itself. Now, of course, it depends on what the Convention does with the Education article, which is still pending, what the situation would be as to education, but my impression is that that calls for the dealing with the cities on the question of education by general laws. The State lays down its policy. Now the city of New York and most of the other cities — not all of them — have a board of education which is not a part of the city government. It is a separate body corporate and politic, and I am not sure that —

Mr. Franchot — Is the gentleman aware that that matter is now fixed and regulated in the charter of the city of New York?

Mr. Low — Yes, I am perfectly aware of it; as to certain points, it is fixed and regulated, and I should say, as to those points, the State could not change the charter of the city of New York. That determines the size of the board, the method of its selection and all the rest of it. If the State wants to deal with those questions, it must do it by general law and say that the board of education in all cities must be selected in such a way or by alternate ways, or that the cities can or cannot have authority to determine the size of their boards of education. The State now determines by general law what are the standards for a school teacher. On the other hand, if anything should happen in connection with the work of the board of education as to which the State felt that it must interfere because it was a matter of State concern, my understanding is that it could pass a special law directed to that thing, which would be subject to the suspensory veto.

Mr. E. N. Smith — Yesterday I propounded to Mr. O'Brien this question: Can a city adopt a charter taking to itself powers not within the general grant? He answered that question in the negative. Now I understand that your answer to that question is in the affirmative.

Mr. Low — Not in the slightest degree.

Mr. E. N. Smith — In other words, then, if I may ask another question, the matters as to which a city may adopt a charter would be confined to those grants of powers which are contained in this article?

Mr. Low — Which are contained in this article, and which are contained in its present charter. I do not suppose that this article takes from any city what is already in its charter. It certainly

was not intended to do that. It was intended to start with the charters already in existence and having grants of power more or less broad at the present time and I should be very much surprised to learn that there is anything in the proposal of the Cities Committee that would at this time, or at any time, either immediately or later, take from the cities, by virtue of this grant, any power that they now have.

Mr. D. Nicoll — If the plan or method of amending the city charter in section 4, by having the amendment first passed by the aldermen, then the Board of Estimate and then approved by the mayor, does go to the Legislature and become a law unless the Legislature acts upon it, what is the use of continuing that other provision which we adopted in 1894 with regard to special city laws? Why make two methods of amending the charter?

Mr. Low — Mr. Chairman, my answer would be that I do not think that the provision in regard to special city laws does make a second method of amending a charter. If it does, it was not intended to and the language must be more carefully studied. The reason, as I tried to point out to you yesterday, for preserving in the State the right to pass a special city law is that the variety of interests represented by the cities of New York State is so great that I doubt the possibility of dealing in a statesmanlike way with every question that may come up, by general law. My hope is that more and more, if this amendment is adopted, the policy of the State as to cities will be determined by general law, as to education, as to assessment, as to taxation, as to the control of public utilities, as to all the questions in which the cities have a common interest and where the policy may be the same. But I ask the delegates to notice this: The present State Constitution, under the amendments suggested by the Cities Committee, is obliged to make, in the section which deals with the debt limit of cities, special provisions for the city of New York. We are obliged to make, or give the Legislature the authority to make, special arrangements for small cities, in order to provide as to their debt limit and the limit of taxation, because, although Section 10 of Article VIII limits the amount that can be laid by way of taxation upon cities of 100,000 inhabitants or more, it does not touch the small cities at all; and we were informed, when we suggested making it uniform, that the rule would not fit the smaller cities. Now, Mr. Chairman, the thought of the Committee was this, if I correctly interpret it: If the State Constitution is obliged to deal in a special way with the city of New York, with the larger cities, on such questions, what ground is there for believing that in the future nothing will happen as to which statesmanship will require the State to address itself to a similar

problem? What we wanted to do was to leave the State in a position to deal with the problem on its merits and not to confine it to passing general laws which may fit some things and not fit others. It was not intended in the least to permit the state to modify city charters except at the request of the cities.

Mr. D. Nicoll—I think you pointed out yesterday, as you have said many times before, that the great trouble in the last twenty-five years has been in the constant changes by the Legislature in the charters of the cities. Now suppose, after this Constitution is adopted, somebody wanted to abolish the office of chamberlain, we will say. That office is related to the framework of the government of cities. Could you abolish it by a special city law?

Mr. Low—I think as this reads, as one of my illustrations used yesterday, that would be a change in the framework and the city must initiate it. It must be adopted by the board of aldermen, the board of estimate and apportionment and the mayor.

Mr. D. Nicoll—And it could not be abolished except on the initiation of the city?

Mr. Low—Absolutely not, nor could any other department of the city. I understand that the power of amending and changing charters is taken away from the Legislature absolutely by this provision, except on the initiative of the city itself.

Mr. Marshall—I would like to ask this one question, whether that interpretation is not diametrically opposed to the interpretation which was given by Mr. O'Brian yesterday to these provisions? I understood him to say, so far as it related to government of the cities, that being a part of the sovereign power, the right of initiation was in the Legislature, subject to the suspensory veto; but, so far as those features of a city's activities are concerned which relate to its property, business and local affairs, in that respect it was necessary to proceed in accordance with the charter and on the initiative of the city as provided in Section 4. Now, both of those propositions cannot be correct and it would seem to me, to give due weight to all the language, that Mr. O'Brian's interpretation must be the correct interpretation of that language.

Mr. Low—Mr. Chairman, I am not a lawyer and I may misconceive the legal effect of the language, but I know what was in my mind, and the gentleman who listened to my statement yesterday must appreciate that I stated then just what I have stated now, that the proposed Cities Committee's amendment made it impossible for the Legislature to take the initiative in the making or amending of charters. Now I thought what was intended by the amendment in relation to special laws—not at all that it

was intended to give the Legislature the opportunity or the power to amend charters as they are now found in existence or new charters that may be regularly adopted. I look upon that as a part of the grant already made to the cities, which is an exclusive grant, but I do believe that if any situation should arise, for example, affecting the police force of the city of New York or the board of education or the health department which required special action by the State, it could take that special action under this clause relating to city laws. It never was my thought for a moment that, under this exception in Section 3 as to city laws, the State was given the opportunity to change charters or to amend them in the slightest degree. If it does, I think we want to overcome it.

Mr. Wickersham — Mr. Low, it seems to me to be perfectly clear from this language that your interpretation is the only correct interpretation of the amendment. I do not see how anybody else can reach a different conclusion. Now, just consider for one moment what this language does. I take it up as a new proposition because I have not been in the committee, but here is a grant to the city of power, among other things, to amend its charter or "any special or local laws affecting the property, business or local affairs of the city". Now you have got a provision here on page 3 of the bill which says that "Laws relating to the government of cities and applying to less than all the cities of the state without classification or distinction and not within the powers granted to cities by this article are defined for the purposes of this section as special city laws." Then there is a provision for the enactment of special city laws by the Legislature. Farther on in this next section is the regulation of the exercise by the legislative authorities of the city of the powers devolved upon them by the article. Generally speaking, they may enact amendments to the charter or any special or local laws affecting the property, business or local affairs of the city; and, generally speaking, these enactments, when approved by the mayor and board of estimate and apportionment, become final. But if the enactment changes the framework of the government, then it has got to be submitted to the Legislature of the State, which is given a sixty-day opportunity to nullify it. Therefore, the power to amend the charter is vested in the city, to be exercised by the city, subject only to the power of the Legislature to overrule the city if it chooses within sixty days. Now is not that, Mr. Low, your interpretation?

Mr. D. Nicoll — One moment. Will the delegate yield? And subject also to the power of the Legislature to pass special city laws?

Mr. Wickersham — No, I do not understand anything of the kind. That is precisely what it is not. If you will go back — those special city laws apply to things which are not within the charter of the city.

Mr. D. Nicoll — They don't here; they may in another amendment.

Mr. Wickersham — I am speaking of this bill. Within the powers granted to the city there is the power to amend its own charter, and a special city law cannot operate within the scope of the power granted to the city.

Mr. D. Nicoll — The special city law must relate to the city?

Mr. Wickersham — Yes, but it does not amend a charter.

Mr. D. Nicoll — What else can it relate to?

Mr. Wickersham — There are many things. It may relate to a city law that does not amend a charter. A charter may be wholly silent on some subject which is covered by a law relative to the subject. But the Legislature cannot deal with that subject except by means of this special city law, and as to that, the suspensory veto is vested in the mayor.

Mr. Wickersham — I merely asked Mr. Low a question. Mr. Low has the floor and it is only by his courtesy that I am asking the question. I only wanted to know whether I correctly interpreted, from his point of view, in my statement what seems to me to be the only correct interpretation of this language.

The Chairman — Mr. Low has the floor. Does he desire to answer this question before another is asked?

Mr. Low — Yes, I think I had better answer one question at a time, if it is agreeable to the Convention. Mr. Wickersham has interpreted the proposal exactly as I understand it, and it was precisely in order to preserve the initiative to the cities in the amendment of their charters that, in this matter relating to special laws, we limited the authority of the Legislature to passing such laws when they were not within the powers granted to cities. Among the powers granted to cities was the right to make and amend their charters. Now, perhaps an illustration may serve. Take the police department, which is undoubtedly a department where the city acts as the agent of the State — as I believe it to be. I do not think that the Legislature by special city law could change the form and management of the police department in any city under this amendment. I think, on the other hand, if the Legislature made up its mind that in a certain city the police department was not functioning well and that it was of so much more importance to the State that the State itself should administer the police affairs there, it could do it under a special law.

Mr. D. Nicoll — Under what?

Mr. Low — They could pass a special city law taking charge of the police department in any city.

Mr. Wickersham — In other words, your thought there, I take it, Mr. Low, is that if the Legislature choose to say that in all cities of the third class there should be no police department but that the State constabulary should perform the functions of the police, that would be within the functions of a special city law?

Mr. Low — I think it would be, yes. I think that the State can do those things that it feels it ought to do relating to these State functions, by special city laws, but it cannot do it by changing a charter.

Mr. D. Nicoll — Can the State change the constitution of the police department so as to give us back our four commissioners?

Mr. Low — I think not, except on the initiative of the city. That is precisely what I understand to be covered by granting to the city —

Mr. D. Nicoll — Nor can the State interfere with the police department of the city of New York?

Mr. Low — If there is anything which is not touched by the city charter in regard to the police department, I think the State might pass a special law about it, or if the police department was not functioning well.

Mr. D. Nicoll — What do you mean by that?

Mr. Low — If the situation was so serious that the State of New York would say to itself, "We will do as Missouri does" — Missouri is a home rule State and runs the police departments of St. Louis and Kansas City. Massachusetts runs the police department of Boston. I do not think there is anything in this article to prevent the State of New York from doing the same thing.

Mr. Nicoll — Then, if, in the judgment of the Legislature, the police department of the city of New York was not functioning well, it could abolish the police department and establish a constabulary of its own?

Mr. Wickersham — No.

Mr. D. Nicoll — Is that so?

Mr. Low — I should say that it could, subject to the suspensory veto.

Mr. Wickersham — I beg leave to differ with his interpretation entirely. If the charter contained a provision creating a police department and that was a part of the city government, then the change of the framework of government to that extent is exclusively vested in the city. The power of the Legislature is taken away from it because section 4 opens with the grant that "every

city shall have exclusive power * * * Such power shall be deemed to include * * *. The power, as hereinafter provided, to amend its charter or any local or special law relating to its property, business or local affairs." Now if this has to be done by an amendment of its charter, exclusive legislative power over that subject is vested in the city to be exercised, in case it affects the framework of its government, in conformity with the provision which requires it to leave its amendments with the Legislature for sixty days, subject to its nullifying veto. I do not understand this to leave it free to the Legislature to abolish any department of the city government or to make any other amendment to the charter of the city except on the initiative of the city. In order to cover the whole field of legislation affecting cities, the provision is that a special local law, which is defined for the purposes of this article, may be enacted by the city, but that must be something which deals with a subject which is not already in the charter. If you start out with a charter which had received proper legislative approval and becomes a charter under the terms of this act, then you have got an exclusive grant of power of what is contained in the charter, to be changed only at the instance of the city and in the method set forth in this bill. That is my interpretation of this.

Mr. J. L. O'Brian — Mr. Chairman, I think the question suggested by Mr. Nicoll is the most valuable contribution that has been made to this argument because it does bring up very sharply what I think fairly is an ambiguity although I had not seen it myself in quite the sharp light in which he presented it. Now my interpretation of this measure differs from that of Mr. Wickersham and I still adhere to the view which I expressed yesterday. While I did not draft this measure, I had something to do with it, and the fact that so able counsel as Mr. Wickersham sees the language in a different light certainly brings up the point that this power should be made clear.

As I view the conundrum which presents itself, it is this: We have granted in this act control to cities over their property and local affairs. We have left to the State power to enact special laws, relating to the government of a city which do not trench upon that exclusive field. Now, then, is the franchise-granting power part of the business, property or local affairs of a city? If not then the city has the exclusive power and the Legislature may not interfere.

Mr. Wickersham — Is not that a totally different question that you are raising there? You are raising the question of whether or not the power to grant a franchise is one of the powers conferred upon the cities which they may embody in their charter.

Mr. D. Nicoll — That is not my proposition. I am talking about a change —

The Chairman — Delegates will please not all talk at once. The Chair will recognize each delegate in turn.

Mr. D. Nicoll — I apologize most humbly to the Chair.

Mr. O'Brian — No; that is not before us.

Mr. Wickersham — Then I will leave that. The point is that without now undertaking to state what is in the charter, the discussion which has been proceeding here has been whether or not the correct interpretation of this measure is that the charter, with whatever is properly contained in it, is subject to legislative interference except on the initiative of the city itself. That is the proposition we have been discussing.

Mr. J. L. O'Brian — Now, then, it is my view of this document that when the city was granted power to amend its charter or to revise its charter, that was not an affirmative, substantive grant of power by which the city, when it amended its charter or revised its charter, could reach out beyond the exclusive power here conferred and take unto itself other powers. I understand that is the question before the House.

Mr. Wickersham — Surely.

Mr. J. L. O'Brian — And on the second page which Mr. Wickersham read, on page 6, I think, the language does give color to Mr. Wickersham's interpretation of this, that the legislative power of the city may enact amendments, etc., because down in the latter part of that section, in line 16, it reads: "Every other amendment shall be submitted to the Legislature" —

Mr. Marshall — It reads: "Every other such amendment shall be submitted to the Legislature", etc.

Mr. J. L. O'Brian — Very well. Now, does that go to an amendment which would grant to the city something beyond its power over its exclusive property, and control over its affairs? In my opinion there is no grant of power to the city to do any such thing. The grant of power to the city is of exclusive control and management of its property and local affairs, and for the exercise and control of that grant. It is given the power to make or amend the charter, and with the word "government" omitted from this section, I think the interpretation of Mr. Nicoll is correct, and I think the city does not have the power to reach out simply by amending its charter or by revising its charter and get for itself anything beyond "control of its property and local affairs", and I think that is reasonably clear on an analysis of the bill, because the bill specifies what the Constitution is now intending to grant to cities. We make what we call an exclusive, direct grant to cities, and I don't believe that any more than I

believe a man can lift himself by his bootstraps. I don't believe the city can stand on that grant and have the power to amend a charter, to so amend as to add to that original constitutional grant and therefore I think this argument, for me at any rate, has presented this ambiguity in a very sharp light, and I think it should be dealt with, one way or the other, by the Convention.

Mr. Wickersham — Your question raises the inquiry of the scope of the grant of power by this article to a city?

Mr. J. L. O'Brian — Yes.

Mr. Wickersham — Now, laying that aside for one moment, I understand you to differ with the construction which we have put on the article, that within the limits of the constitutional grant of power, the power to amend the charter of the city is vested exclusively in the city, to be exercised by it on its own initiative, and free from legislative interference?

Mr. J. L. O'Brian — Yes; but the State, under this suspensive veto provision, while it may not in terms amend the charter, nevertheless the State can pass laws affecting the government of a city provided they are not within the scope of the property and local affairs of the city, and the only limitation of that right is the suspensive veto. I understood that I answered Senator Cobb to that effect yesterday.

Mr. Wickersham — In other words, keeping to the point of the argument, for a moment, so long as they do not apply to the legitimate powers conferred upon the city by this article, in other words, to the extent that there is a grant of power by the charter to the city, it is exclusive?

Mr. J. L. O'Brian — Yes.

Mr. Wickersham — And the local laws which the Legislature may initiate must be those which do not impinge upon the charter of the city so far as that charter will have been constitutionally enacted?

Mr. J. L. O'Brian — Yes.

Mr. Wickersham — Outside the perimeter of the charter there is, I think, all legislation which affects the city but which does not touch the charter, and that field is left open to legislative initiative, and is made subject to the suspensory veto of the city.

Mr. J. L. O'Brian — Yes.

Mr. Wickersham — So the two questions which arise are, what is the grant of power by this provision which the city is to exclusively enjoy, and then how may that be taken up which is outside local legislation?

Mr. J. L. O'Brian — Yes. Now let us take the police which does present the ambiguity, in my view. This exclusive grant of power would enable, I presume, a city to decide how many

police employees it should have; what their salaries should be and what their duties were; but, as the Chairman pointed out, in the language of a layman, suppose the police of the city of New York are not functioning well in the view of Albany, then Albany may pass a special law on the ground that the situation is such in New York city that it has become a matter of State concern. Now, it is a question, in my mind, whether that does not —

Mr. Weed — In subdivision a of section four, one of the exclusive powers to control its own property and local affairs is stated to be "The power to organize and manage all departments" — Now, the police department is a well recognized department of that city and why does not that language prevent the Legislature from interfering with the management of that department?

Mr. D. Nicoll — Read it further, Mr. Delegate, "and of all police and health officers".

Mr. Weed — Well, as I understand it, all the departments in subdivision a are specifically included in this grant of power to control and regulate its affairs. Doesn't it seem to you that that prevents the Legislature from initiating any interference with one of those departments mentioned in that section?

Mr. J. L. O'Brian — The best answer I can make to that question is the observation of the Chairman that if the City Department of Police is not functioning properly, then the issue becomes a matter of State concern. If we had in this section four, without expressing any personal opinion or preference, now if we had the word "government", as well as "property" and "local affairs", then I think the question would be answered.

Mr. Quigg — Mr. O'Brian, in every reference you made to the grant of power here, you have omitted the word "business". You have spoken of the grant of power —

Mr. J. L. O'Brian — That was accidental on my part.

Mr. Quigg — Will you tell me what distinction you made in your mind between "business" and "local affairs"?

Mr. J. L. O'Brian — If I am obliged to confess in this presence, I don't think there is any difference. I think the word "business" adds nothing to the section, in my personal opinion. I think "property" and "local affairs" covers it.

Mr. R. B. Smith — Mr. Chairman, I am curious to know what that provision of the charter means, particularly with reference to my own city. We have the second-class cities law, then we have about eight provisions of law supplemental to each of the different articles of the second-class cities law, then we have some fifteen or twenty other special city laws, creating a department of educa-

tion, several commissions for doing various things, in cleaning out creeks and eliminating grade crossings. I would like to know what is in our charter. Does it include all these grants affecting cities?

Mr. J. L. O'Brian — Far be it from me to say what is in the Charter of the City of Syracuse. But the only pertinency of that question, I think, Mr. Smith, is the question of how you may amend that charter or revise it.

Mr. R. B. Smith — I am curious to know.

Mr. J. L. O'Brian — The only answer I can make is that legislative authorities of a city may enact amendments to a charter or in local laws affecting property or local affairs.

Mr. R. B. Smith — But under the construction given by Mr. Low, that whatever is in the charter, no matter to what it relates, stays there until it is amended, then it becomes important to know what the method is.

Mr. J. L. O'Brian — Well, Mr. Chairman, of course, I think Mr. Low's distinction was one of terms. The point is that the Legislature may, unquestionably, under this suspensory veto, pass laws which have the effect of amending the charter, although it does not do so in terms.

Mr. Sanders — I have followed very carefully the discussion in which Mr. Wickersham and Mr. O'Brian have engaged in large part, and I find myself unable to agree entirely with either of them. I agree with Mr. Wickersham that the power to amend charters is not limited to the matters in which the cities are given exclusive control. It seems to me that subdivision 5, Section 4, is not to the extent that it has been indicated adjective to the powers granted theretofore in the section, but it seems to me that as to any matter as to which a city desires to amend its charter, it may initiate an amendment, and if it is not within the exclusive grant of powers of cities, it must go to the Legislature to give that body an opportunity to annul it. Now, when you get beyond that line, it is my opinion that there is concurrent jurisdiction in the legislative body of the city and in the Legislature of the State, under the power granted to the Legislature to pass special laws relating to cities. There may be initiation by the common council of the city subject to the action of the Legislature, or there may be a special law initiated by the Legislature and subject to the suspensive veto.

Mr. Franchot — In order to clear this matter up and get it concretely before the Committee, I offer the following amendment which will present the issue as to whether we wish to adopt Mr. Wickersham's view, Mr. O'Brian's view, or Mr. Sanders' view of the meaning of the language of this proposal.

The Secretary — Page 5; strike out in subdivision *b* and insert in lieu thereof the following: "Section *b*: The right in the exercise of such power, to amend its charter in so far as it relates to the property, business, or local affairs of a city, and any local or special law relating thereto."

Mr. Franchot — Mr. Chairman, in support of that suggested amendment, I merely point out that it is clearly the intent of everybody, no matter how they may differ on this question, to reserve certain things to the State for its control by special law under the suspensive veto or otherwise. It is the conception of everybody that there are certain matters which clearly are matters of State concern and are not matters within the designation "property, business and local affairs." Now, those matters, which everybody will admit are matters of local concern, such as the establishment and jurisdiction of local inferior courts, are now vested completely in the charters of the cities, in the charter, for instance, of the City of New York, which has one subdivision consisting of thirty-six pages covering completely the field of local inferior courts at present — almost completely. At any rate, it presents a rather comprehensive system or scheme of local inferior courts. Now, unless the Legislature can change that, can change those provisions of the charter, it is practically helpless to do anything except add to that, and it could not establish a new system of local inferior courts unless it established it as a parallel system to the one which at present exists, because any interference with the present system would be an amendment to the charter so that it seems to me essential that the authority, and, taking the obverse of that proposition, the local legislative body of the city, with the approval of the Board of Estimate and the Mayor, would have the right to originate changes with respect to the system of local inferior courts, and I do not think it is the intent of anybody, advocates of home rule or otherwise, to vest that function in the city government as distinct from the Legislature. Now, the amendment which has just been read is substantially one which I proposed in the Cities Committee, and which was not adopted, because apparently a majority of that Committee seemed to think that there was no ambiguity in the language now under criticism. I think it ought to be adopted by the Committee of the Whole simply for the sake of clarity.

Mr. Wickersham — Mr. Chairman, I don't see how the matter is clarified much by this amendment. I quite agree with Mr. Franchot —

Mr. Sanders — I agree that Mr. Franchot's amendment would clarify the situation, but I think it clarifies it the wrong way, and I therefore move, as a substitute for Mr. Franchot's amendment, to amend Section four, subdivision *b* —

The Chairman — Will the gentleman submit his amendment to the desk?

Mr. Sanders — It is very simple; it is only the insertion of a comma; by inserting after the word “charter” in line 3, page 5, a comma, that has the effect of giving the power to amend the charter or to amend any local or special law relating to its property, business or local affairs, and prevents the clause relating to property, business and local affairs from limiting the word “charter.”

Mr. Wickersham — Would it not be better to insert the words “or to amend,” so as to make it perfectly clear?

Mr. Sanders — I accept the amendment.

Mr. R. B. Smith — Mr. Chairman, I have been requested to offer the following amendment.

The Secretary — By Mr. R. B. Smith. Page 6, line 16, after the word “to” insert in italics the following: “the electors of the city at the next ensuing general election, or at a special election, to be called for that purpose. If such amendment be approved by the affirmative vote of the majority of the registered electors, such amendment shall be laid before.”

Mr. Wickersham — Mr. Chairman, the hour of one has arrived, and I am about to move that the Committee arise, report progress and ask leave to sit again, unless it is the desire of those present to come back after a recess. I think in view of our reduced numbers, we have made very good progress this morning, and we would better take the former course. It would be well to have these amendments printed, and I therefore move that we now arise, report progress and ask leave to sit again on this measure and that in the meantime the amendments be printed.

The Chairman — Of course the motion concerning the printing of the amendments is not in order.

Before putting the motion, the Chair would like to ask if Mr. Nicoll has sent the amendment to the desk which he said he would present.

Mr. D. Nicoll — Mr. Chairman, I have not yet done so.

The Chairman — Can you do so now, Mr. Nicoll?

Mr. D. Nicoll — I can, Mr. Chairman. I will do so.

Mr. E. N. Smith — Mr. Chairman, would it be in order for me to offer some amendments at this time? I have them ready, and would like to present them, that they may be printed.

The Chairman — It would not only be in order, but I think it very desirable to have it done. You do not desire them read at this time?

Mr. E. N. Smith — Oh, no, I do not.

Mr. Sears — Mr. Chairman, I also offer an amendment, to bring it up for the purpose of discussion.

Mr. D. Nicoll — Mr. Chairman, I offer the amendment.

The Chairman — You do not desire to have it read now, Mr. Nicoll?

Mr. D. Nicoll — No.

The Chairman — The motion now is to rise, report progress and ask leave to sit again with the recommendation to the Convention that the amendments offered be printed. Those in favor of the motion will say Aye. Those opposed No. The motion is carried.

(The President resumes the Chair.)

Mr. Austin — The Committee of the Whole has met to consider the special order of the day, — General Order No. 50, — has made some progress thereon, has risen and asks leave to sit again; and at the same time recommends to the Convention that the amendments introduced this morning be printed.

The President — The question is on granting leave to sit again. All in favor will say Aye, contrary No. The leave is granted. The question now arises upon the recommendation of the Committee of the Whole and handed to the Secretary, be printed for the information of the Convention. All in favor of printing will say Aye, contrary No. The Ayes have it, and the printing is ordered.

Mr. Deyo — Mr. President, I would respectfully ask leave of absence for the sessions Monday morning and afternoon.

The President — The question is on granting leave of absence asked by Mr. Deyo. All in favor will say Aye, contrary No. The leave is granted.

Mr. Wickersham — Mr. President, I move that the Convention do now adjourn.

Mr. Lincoln — Mr. President, might I ask to what hour?

The President — A motion to adjourn will carry the Convention to ten o'clock Monday morning.

Mr. Lincoln — Mr. President, under the rule adopted last Friday, the motion was to have Saturday sessions from ten to one and from two-thirty to five-thirty. I suggest that some special motion is in order.

The President — The Chair cannot agree with the gentleman. The standing rule of sessions does not prevent the House from adjourning, and adjournment on any day carries the Convention to the hour of the Convention of the next following day. The Convention, to sit this afternoon, would take a recess until afternoon. If it is to sit in the evening, the evening of the same day, it takes a recess. An adjournment ends the session for the day, and carries the Convention to the hour of the session of the next day, so the motion of the gentleman from New York, Mr. Wickersham, if carried, adjourns the Convention for the day, and

adjourns the Convention until ten o'clock Monday morning. All in favor of the motion will say Aye, contrary No. The motion is carried, and the Convention stands adjourned until ten o'clock Monday morning. Whereupon, at 1:10 p. m. the Convention adjourned, to meet at 10:00 o'clock a. m., Monday, August 16, 1915.

MONDAY, AUGUST 16, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Charles Graves.

The Rev. Mr. Graves — Our Father, Who art in Heaven and on earth, and under the earth, standing as we do now upon the threshold of another day with important tasks waiting to be done and far-reaching problems of human welfare to be solved, we pray that we may be richly endowed with the gift of clear seeing and straight thinking, so that our labors here may yield full measure of righteousness, of justice and of truth. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Stimson — The chairman of the Committee on Revision has called my attention to a slight inaccuracy of language in amendment No. 802, concerning the budget, which passed the Committee of the Whole last Wednesday, and I have drawn this motion to cover the suggestion which he has made. I ask unanimous consent for its present consideration.

The President — Is there objection? The Chair hears none and the resolution is before the Convention.

The Secretary — By Mr. Stimson: Resolved, That the Committee on Revision be discharged from consideration of amendment No. 709, Print No. 778-802, third reading No. 14; that the said amendment be amended as indicated below and then recommitting to the Committee on Revision. Page 4, line 9, after the word "year" strike out "for" and insert "next succeeding that in".

Mr. Stimson — The Clerk did not read the entire motion. I asked that it be amended without losing its place on third reading.

The President — All those in favor of the resolution will say Aye, contrary No. The Clerk will proceed.

Mr. Westwood — I move to discharge the Committee on Revision from further consideration of Constitutional Amendment,

Print No. 806, Int. No. 679; that the same be referred to the Committee on Taxation with instructions forthwith to amend the same, with the following amendment: Strike out all of Section 1 after the first sentence and insert the following: No real estate whatsoever except that of the United States shall hereafter be exempt from taxation, but nothing herein contained shall be held to impair the validity of the existing contracts of the State. The motion, I presume, will give rise to discussion and should, I think, under the rule, lie over for a day.

The President — The resolution will lie over. Reports of standing committees. Reports of select committees. Third reading. Unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole for further consideration of the pending special order, reported by the Committee on Cities. Mr. Austin will resume the Chair.

The Chairman — The Convention is in Committee of the Whole on the special order of the day, which is General Order 50. Section 4 is under consideration.

Mr. Latson — Mr. Chairman, on Saturday a very interesting and helpful discussion arose with reference to the general scope of this measure, and the discussion gathered around the question which was asked by delegate Delancey Nicoll. You will remember, Mr. Chairman, that the question was substantially based upon the situation which arose in the city of New York when the Pennsylvania Railroad desired certain franchise privileges. The Board of Aldermen were reluctant to grant the privilege and the Legislature transferred from the Board of Aldermen the power to the Board of Estimate and Apportionment. The question arose, as I remember it, whether or not under this proposed measure the city of New York would have the power to deal with such a condition or whether, even in event of this measure, we should be compelled to go to the Legislature. It seemed to me that the correct analysis of that situation had not been fully brought out. I do not agree with my brother delegate, John Lord O'Brian, who took the view that there was an ambiguity in that language which perhaps was overlooked and had not been brought to our attention when the question of Mr. Nicoll was brought up. Neither do I agree with Mr. Sanders, also a member of our Committee, who expressed the view that it left concurrent remedies, one through the city and one through the Legislature. Speaking too with the greatest respect to my senior, Mr. Delancey Nicoll, I feel that the difficulty arose from the form in which the question was presented, and I think Mr. Nicoll overlooked a thing which he knows very well and much better than I, that it is a misuse of words to speak of the city granting a franchise, and the difficulty in my opinion lies right there. The city grants no fran-

chise to a railroad corporation. The franchise comes from the State. That is where the railroad gets its franchise and our present Constitution contains the specific provision that the franchise-making power of the State shall be exercised by the enactment of general laws. Therefore when a railroad corporation files its certificate of incorporation and complies with the Railroad Law and complies with the General Corporation Law, it thereby obtains its franchise and not simply a franchise to be a corporation but a franchise to use the streets nominated in its certificate of incorporation * * *. The Constitution provides further, however, that no franchise granted by the State shall be exercised without the consent of the local authorities, so that the thing which we are in the habit of calling a franchise, namely, the action of the municipality which Mr. Nicoll had in mind, whether by the Board of Aldermen or by the Board of Estimate and Apportionment, is not a franchise granted by the city, but is simply the consent of the local authorities required by the Constitution. In that field the city is sovereign. It gets its sovereign right from the Constitution and when the city withholds its consent or grants its consent the conclusion at which the city arrives cannot be reviewed anywhere in the courts or the Legislature or elsewhere. That is a sovereign right which the city has. Now it seems to me with that thought in mind we approach Mr. Nicoll's question a little differently. All that the Legislature had done was to provide in the Charter of the city of New York what particular agency or instrumentality should exercise the constitutional power to grant or withhold consent, and the Legislature at that time amended the Charter by nominating and designating the Board of Estimate instead of the Board of Aldermen. No power was given to the city. No power was taken away from the city. It was simply a statutory regulation with reference to the exercise of a constitutional power. Now if we test this proposed measure of the Cities Committee in the light of that conception, I think it becomes perfectly clear that the city is about to be vested with power to deal with its own affairs. One of the affairs of the city is the exercise of the constitutional right in which field it is a sovereign. And in dealing with that matter it takes to itself no new power; it divests itself of no power. It simply exercises the constitutional power given to it by giving or withholding consent, and would be at liberty to amend its charter by saying that whereas the Board of Aldermen heretofore had this power to grant the consent of the city to nominate the Board of Estimate and designate that as the proper instrumentality of the city to exercise this constitutional power. As we come to the last question we exhaust the subject. It must be decided whether or

not such action would touch the framework of the government of the city. If the language we have prepared be so construed that such a change would not be regarded as touching the framework of government, then the Charter amendment would not go to the Legislature. If, on the other hand, the opposite construction be given to this language then as I suggested from the floor on Saturday the amendment having passed the Board of Aldermen and the Board of Estimate and having been approved by the Mayor must be submitted to the Legislature. My purpose is to say that I do not recognize the ambiguity Mr. O'Brian charges. I do not see the concurrent authority of Mr. Sanders. I find no difficulty in answering the proposition, for the city is not granting a franchise but is within the field where it is sovereign.

Mr. D. Nicoll — I think, Mr. Latson, you made your point of view very clear. It would still have to go to the Legislature to transfer the power from the Board of Aldermen to the Board of Estimate and Apportionment.

Mr. Latson — Mr. Chairman, as I see that question, it is going to turn on the construction of the word "framework".

Mr. D. Nicoll — Well, of course, are not all questions of transferring power, creating offices, disposing of offices, and shifting power from one place to another, all related to the framework of the government?

Mr. Latson — I should so consider it, Mr. Nicoll.

Mr. D. Nicoll — You might say, therefore, that about 90 per cent. of all matters of amendment would still have to go to the Legislature.

Mr. Latson — Mr. Chairman, it may be remembered, perhaps, that on Saturday I expressed the view, in answer to Mr. Nicoll's question, that such an amendment would be initiated by the city through the Board of Aldermen, concurrent action by the Board of Estimate, approved by the Mayor, and then would be submitted to the Legislature to await nullification for sixty days. You may remember there were others who did not concur in that view and thought they saw some ambiguity. I was about to speak on that subject just as we arrived at the hour of adjournment. The reason I was about to express on Saturday is the very reason I suggest at this time and I believe that construction leaves this without any ambiguity. It is easily understood if once we get away from the notion that the city in that is granting a franchise and keep in mind that it is exercising a constitutional right within a field where it is sovereign.

Mr. Wickersham — I should like to suggest an amendment to the amendment which Mr. Nicoll proposed on Saturday, but I suggest it as an original amendment, so as not to confuse it, merely,

and I do it simply for the purpose of developing thought on this line. On page 4, line 14, insert between the words "own" and "property" the words "local government"; strike out in the same line the words "business and local", so that the two lines will read: "Every city shall have exclusive power to manage, regulate and control its own local government, property and affairs".

The Chairman — Will the delegate be good enough to send the amendment to the desk?

Mr. Wickersham — I will write that out.

Mr. D. Nicoll — May I ask a question? That does not change my amendment except by inserting the word "local" before the word "government", is that right?

Mr. Wickersham — That is right.

The Chairman — Does any other delegate wish to be heard upon Section 4?

Mr. Latson — I do wish to be heard upon this proposed bill of the Committee, and yet it has seemed to me that that which is in my mind might be more properly expressed after these proposed substitutes shall have been somewhat discussed in Convention. We have one from Mr. Morgan J. O'Brien, another one from Mr. Wagner, and some very essential amendments offered by Mr. Nicoll, and it would be helpful to note the line of thought which is adopted in support of these very substantial changes in and departures from the Committee's report before dealing with the report itself.

The Chairman — The Chair will have to reiterate its former ruling, that the former substitutes may not be considered until the original amendment has been considered.

Mr. Latson — Then, Mr. Chairman, I will address myself to that branch of the question. There is, in my opinion, very great necessity, Mr. Chairman, for devoting ourselves, as far as possible, to the broad questions underlying this proposed measure before we spend too much time upon the details of words. I think there is a certain phase of this matter that needs to be emphasized before the Convention or the Committee of the Whole can approach the question with the same illumination that it had when under consideration in the Committee and the Subcommittee on Draft. Speaking as a member of the Committee on Cities, and a member of the Committee on Draft, I realize fully that the language we have here may not be entirely or altogether satisfactory. In fact, strange as it may seem, perhaps it is not entirely satisfactory to very many members of the Cities Committee, that is, in its entirety. Why? Because there were those who were seeking the very largest and the most limitless

measure of home rule that could be conceived; and then there were those who looked with great alarm upon the granting of any such broad powers; then there were those who thought that whatever powers were to be granted should be enumerated, and then there were those who thought that that was improper, that what we should do should be to enumerate the powers which were reserved to the State. So there were all these shades of opinion. Now, as this came up for consideration each type of opinion found its special criticism and its requests to take out this word and substitute another, to cut out that phrase until you have here the resultant of the contribution of thought by 12 or 15 men, and not in its entirety is it entirely satisfactory to many members of the Committee, if any, but it does bring to this Convention and to this Committee of the Whole, an expression of certain underlying propositions, and it is with reference to those propositions that I wish to speak, and it seems to me that we would be proceeding more logically and that we would be expediting our work if we could now approach this measure for the purpose of ascertaining its philosophy and having determined just how far we, as a Committee of the Whole, are to go with reference to these broader questions, the difficulty of forming such thoughts in language will reduce itself to a negligible quantity. Now, I suppose everybody understands that in the last analysis the attention of every man is fixed upon the city of New York when he stops to consider the effect of this proposed measure. Each man in this Convention brings to the task a knowledge of the particular conditions and problems which confront him in his city, and so we from the city of New York approach this question with a recognition of those problems and with one other thought, that the city is the great asset of the State and it is the city in which all are interested, and, perhaps, it would be wise for a moment to indicate just what the problem is as presented in the city of New York. In the first place, the great difficulty is that the thing we call a charter down there, it is a misnomer. Many of you gentlemen come from cities where you have distinctly and scientifically a charter granted to you by the Legislature in its entirety, or so revised that it may be properly described by that word "charter." But you must recognize that the city of New York has nothing that corresponds to that description. You must remember how the city of New York came into existence. You must turn back somewhat to its history. You must remember that to-day the city of New York, regarded as a municipal unit, gathers into itself and is composed of, I think, something like, very nearly 100 municipal corporations which have been absorbed into it during these years of evolution. The old City of New York on Man-

hattan Island had gathered from time to time many little settlements such as Manhattanville, Harlem, Carmansville, Greenwich Village, etc.; and while this process was going on upon one side of the river, the city of Brooklyn was gathering to itself such towns and hamlets as Bedford, Willamsburgh, New Lots, Flatbush and others that do not occur to me at the moment, and all over that region the city of Brooklyn was gathering in by process of absorption all of these little villages.

Then we had the city of Long Island which had gathered in certain outlying hamalets, and outside of Long Island City you had village government and county government that was not yet in the form of city government; and you had up in the Bronx the old North New York settlement, Mott Haven, which came in, to make the Borough of the Bronx. Down in Richmond there were numerous little villages and towns, which came in to form the Borough of Richmond. So, what happened, gentlemen? Why, each one of these municipal units had its own problem; each one had something in the nature of a bond issue; each one had something in the nature of a sinking fund; each one had something in the nature of a fire department, of a water system, and of a Board of Education. Every one of them had, as a municipal unit, one or all of these instrumentalities of government in existence. When you came finally to amalgamate all of these into the one great city of New York provision had to be made for all of these obligations for each one of these sinking funds, for all of those bonds, and there was an amendment here, an enabling act there, a correcting act there, and a supplementary act here; and so we have this mass of laws which is called the charter of the city of New York coming down to us from these various sources, and I think the charter, the thing which is called the charter of the city of New York to-day represents very nearly, if I understand it, very nearly ten thousand separate statutes of the Legislature. That is the thing we call the charter of the city of New York, and it cannot be approached, as you approach your scientific, definite, precise charter that you are familiar with in some of the smaller cities. Now, there are problems, internal problems that must be faced here. The city is a unit. Yes. But, within itself are other units. These boroughs are units in themselves. Some of the things that I am saying are very familiar to my fellow delegates from the boroughs and from Brooklyn. Some will be less familiar perhaps to delegates from the Borough of Manhattan; and some may be strikingly new to delegates from other parts of the State. But my purpose in speaking on this matter is to bring to you a realization of the problems that you are confronting before you assume the task of dealing with the question of the

extent of home rule you will give to the city of New York. Now, the city of New York to-day, as we are constantly reminded, represents half of the population of the State, or may be a little over, it is true. But, in that connection a further statement is often made that one of these boroughs represents nearly half of that city population. Brooklyn itself is a community of two millions of people, and it has its own interests. It has its own problems, and so it is with every other borough. Now, I cannot bring to this question that degree of learning and experience and maturity of thought that can be brought by my brother Delancey Nicoll, who debated this question twenty years ago in the former Constitutional Convention with all the vigor of thought that characterizes his debates at that time, and who comes to us now with the preservation of all that force and with his maturity of thought added to it; but I can bring to you, I can bring to you something of a personal experience in trying to make up my mind what this charter was, what it consisted of, how it should be treated and then indicate to you what I meant to do as I sat on this Committee on Draft, and what I thought was the logical and philosophical way to approach the question and then ask you to what extent you agree with me.

Now, that I can do. I sat as a member of the Charter Commission appointed by Governor Hughes and I was a member of the Committee on Draft. I sat for an entire winter every evening except Saturday and Sunday, in the Bar Association, in the attempt to frame a revision of what we have called the charter of the city of New York. Now you will all remember that the general scheme of that revision was to separate the organic, or substantive provisions of what is known as the present charter from that which might be called the administrative; that is, to place somewhere aside those broad provisions, or grants of power that outline the nature and form and scheme of government of the city, and call that the charter of the city; and then over here place all those things which are called the administrative, and would go to the exercise of the powers thus granted, and after we had done that, perhaps to call it the administrative code.

If we contemplate the extremes, the significance of this provision will become more apparent. The provisions for executive officers of the city and the provisions for the Legislative branch of the government of the city are clearly matters with reference to the organic side of the question. They represent and deal with provisions that should properly go into a charter, but when in a so-called charter you encounter a provision enacted by the Legislature of the State which deals with the leasing of a bootblack stand in the City of New York, it would surely seem that we are

clearly within the field of the administrative functions of the municipality. So in the deliberations of the Committee on Cities illustrations of this same incongruity were presented by those who appeared before us. Only recently, it was pointed out, the City of New York had occasion to shift the occupants of certain rooms in the Municipal Building, but found that the power to accomplish so small a thing was lodged in the Legislature of the State, and the City was powerless to make such a change until a statute was passed allowing one official to occupy a given room and permitting the present occupant of the room to move across the hall. Now, those are the great extremes. Again, in these you will find debatable ground. You will find places where it is hard to say, is that organic law, or is that administrative? With that general thought in mind and with that as the proposition that was presented by this problem of home rule, naturally we turned for something in the nature of a principle, and I looked for something that I might lay down as a principle that would guide me and that would help me to determine something of the nature of the task that I was undertaking. I remember the sovereignty of the State. I had well in mind the relation between the State and the city, and let me say in passing that it has been remarkable how many fallacies have been presented to the Cities Committee in an attempt to contemplate the relations between the State and the city.

Why, it has been seriously argued that there was something in the nature of a federation between these cities, with the central government of the State over it. A most elaborate attempt has been made to draw an analogy between the Federal government and its relations to the State on the one hand and the State and its relations to the cities on the other hand. Of course the difficulty and the impossibility of that phase of the question can be seen the moment that the mind is fixed upon it. But, how far shall the State at any time relinquish its sovereignty with reference to the cities? And, I turn back to some of the debates in the Constitutional Convention of 1894, and I find some language which was used in this very room and that emanated from a man that I think every one in this room will recognize as the master mind of our community to-day and who was the master mind of that Convention, Mr. Joseph H. Choate. I can take his language, and as he uttered it in this room twenty years ago, repeat it and say that to me it is the guiding principle, it is the means of determining the avenue of approach, the mental condition, by which we shall take on this problem and attempt to deal with it. Let me read to you what Mr. Choate said when he approached this great question: "I do not believe that the people of this State

will ever consent, or ought to be asked to consent to abandon their sovereignty over any division of the city in respect to any of its affairs." That is very broad language, and yet that is just the attitude of mind with which I approach this question, that the sovereignty of the State must be preserved. Adopt if you will the scheme that was so ably outlined by Mr. Louis Marshall in the last Constitutional Convention and under which we have worked for twenty years; deal with it, if you will, and prescribe other ways of exercising the power of the Legislature, by adding certain safeguards; put in there this, that or the other which will make it difficult for the meddling, as it has been called, and proceed but back of it all, back of it all preserve the latent power, the latent sovereignty of the State to be utilized when the cases may require. Mr. Choate, continuing, further said: "Now, there are two evils to be avoided. One is the abandonment of the power of the State over the city, and in my judgement, as I said when I began, the people of the State will never consent to that in any form. The other is to prevent, if we can, constant, causeless, unchecked",—mark these words,—“constant, causeless, unchecked, undeliberate, unnotified, interference with this domestic affair.” I think Mr. John Lord O'Brian was very accurate the other day when he stated what has been called the interference by the Legislature, was not, after all, the voluntary act of the Legislature. What we called interference was not upon the initiative of the Legislature. The bills of which we complain come to the Legislature, but they do not come from the cities. They come from individuals, and the Legislature is flooded with requests for legislation designed to be of particular service or benefit to an individual or to a corporation or to a class of individuals, each bill taking the form of a proposed amendment to the charter. Mr. Foley gave you an excellent example of it here the other day when he referred to a matter in which I was interested and spoke to you about a matter which came up here for the purpose of making it impossible for a certain merchant to longer carry on his business upon a certain block, and, as you may remember, he referred to me as knowing the general subject which he was treating. That is true.

Now, there was a man who had litigated the question unsuccessfully. He had had his day in court and the court said he had no remedy and no cause of complaint and he immediately runs up to the Legislature and he seeks to amend the charter of the city of New York in such a way that he could evade the decision of the court and which might prevent his neighbor from carrying on the business which the court said was perfectly lawful for him to carry on. So the Committee of the Senate and the Committee of the Assembly were engaged day after day in hearings upon

that matter. I appeared in opposition to the bill. It got through the Assembly but was killed off in the Senate. It is thus apparent that these meddlesome measures are not enacted by the Legislature of its own initiative. Nor again do such measures emanate from the cities. They come from the individual seeking some special preferment. This is the evil which we have sought to correct and it is one of the evils which were pointed out by Mr. Choate. An examination of the bill presented by our committee will reveal such to have been its purpose in this regard. There are two classes of amendment in contemplation. One class can be carried to its perfection and can be made operative by the concurrent action of the board of estimate and the board of aldermen and the mayor; no intervention by the Legislature. Now, what I had in mind was that in that class would fall all these things that I have called administrative. That is what I had in mind as one who assisted in drafting this provision; and, on the other hand, if an amendment touched the framework of the government, then that had to go to the Legislature. I had in mind the preservation of the sovereignty of the State with reference to the government of the city and the delegation of certain powers to the city with reference, as we say here, to its own local affairs. Yes, with reference to that branch of matters I have just illustrated that are purely administrative, the boot-black stand, the room in the municipal building, this question with reference to the use of a certain building for a certain business — if that were a constitutional power. I have some doubt whether a law at that time would have been constitutional — but regardless of that question. Those to my mind were the internal affairs that would all pass in on the administrative side of this classification of the provisions of this thing we call the great charter of the city of New York. But back of all that I had in mind that I could not foresee nor could I expect any man in this Convention to foresee just what the future had in store. I did not want to see our Legislature divested of its sovereign power to enter into any field of legislation with reference to any city. I could see the wisdom and necessity of surrounding the exercise of that power with certain safeguards to prevent meddling, to prevent what has been called the vicious inter-meddling with the affairs of the city and encroachment upon its rights, but I wanted that latent power left there, so that brings us to a consideration with reference to special laws.

The special law in contemplation of our committee was not one that related to the government of the city. The City of New York might greatly need the assistance of the Legislature, and indeed has needed such assistance, as was pointed out by Mr. Choate upon the floor of the prior convention at a time when a similar question was under consideration. Mr. Choate said with

reference to a very similar proposition, "I have seen the day in the City of New York when in respect to the internal affairs of the city a prohibition by the Constitution upon the Legislature from interfering would have been destructive of the true interests of the people of the city, and therefore of the people of the State. I think we need from time to time rescue by the Legislature."

There have been incidents in almost the immediate past that were in his mind probably at that time but the truth enunciated by Mr. Choate twenty years ago is a truth to-day, that the sovereignty of the State must be preserved, and I cannot approach this question in any frame of mind that would lead me to consent that the sovereignty of the State over the city would be withdrawn in any particular. Now some of the amendments that have been suggested here made a very marked change in our proposed bill. Mr. Nicoll has suggested that at an appropriate place the word "government" be inserted, the intention being by the introduction of that word to give to the local authorities of the city power over its own form of local government. Not for a moment! That is not my conception.

Mr. D. Nicoll — I intend, as far as I am concerned, to accept the amendment of Mr. Wickersham, made this morning, — "local government," — so that you may address your remarks to that.

Mr. Latson — Very well, Mr. Nicoll. I was coming to that next. Then let me take that up as I remember it in the form that Mr. Wickersham has presented. I regret greatly that Mr. Wickersham has presented three proposed amendments to this bill and I find myself out of sympathy with him on all three. I cannot accept with approval any one of the amendments which Mr. Wickersham has presented. They seem to me to go to the very heart of this bill. They seem to me to touch upon the sacred ground that I have been talking about. I cannot find his line of thought consistent with the work of the Committee on Cities or the Committee on Draft. Now, take the suggestion, as I remember it, that was made by Mr. Wickersham this morning, where he modified the form of the suggestion by Mr. Nicoll. The thought was the same even though I cannot repeat the exact language that Mr. Wickersham used. The underlying thought was that the city of New York, or every other city, acting through its board of aldermen or board of estimate, should have control over its local government. Well, now, the thought expressed by Mr. Wickersham in that proposed amendment is identically the same thought which that learned gentleman expressed when he voiced his disapproval of the word "framework." He encroached upon our scheme in this bill at that time and when he suggested by a proposed amendment that we eliminate the word "framework" and substitute a

provision limiting the clause to elected officials of the city, he destroyed the whole purpose of the bill.

And now that word "framework" — and I want to take those two amendments that I have spoken of together for the reason that it will serve my purpose best to consider them for the moment. Now take the word "framework." That word was selected cautiously. It was selected carefully. There are a good many words that were suggested and weighed in the balance and laid aside. I do not recall all of them. The word "structure" was under consideration. The word "scope" was under consideration. So word after word was considered, and we had a definite purpose in mind. We hunted around for the word that would best express the thought that we had. Now that word "framework" commended itself to us because, among other things, it was not hedged around by any judicial decisions. None of us could recall a judicial decision which had attempted to construe that word in any such connection. We thought that it would present itself for construction in the context as a proposition untrammelled, and a term that could be utilized and measured and weighed just as we weigh any other ordinary word of the English language. Now, I was willing to take that word "framework" under these fundamental thoughts that I have expressed and in reference to which I have quoted Mr. Choate. I was willing to do that. Why? Because I know there is debatable ground there. Go back to what I said to you about our effort to separate the provisions of the charter of the city into organic law and administrative code. As I remarked to you then, there was a place, a debatable ground. Now, that word "framework" brings me right up to that point and undoubtedly questions will arise with reference to which two opinions will be expressed and I am quite willing to take ultimately the decisions of the courts with reference to that word "framework" in connection with the particular language that may be presented for consideration. I am not alarmed by the suggestion that particular language in our Federal Constitution has given rise to an interpretation never thought of in 1787. I appreciate what Mr. Louis Marshall said to us on Saturday on that question. I appreciate the underlying thought, but it seems to me the elasticity of those words "interstate commerce," just like the elasticity of such a word as "framework," is the very strength of the language. The amendment you attempted to make was rigid, inflexible, but in that very amendment you are losing sight of any new conditions that may come into existence in the future, which are not in contemplation at this time, and are leaving out the possibility of the courts dealing with the substantive provision as applied to any new condition of affairs that may be presented by the development by the various avenues of civilization,

science and art. As Mr. Marshall said, in 1787 those words were not written there for the purpose of calling attention to the telephone or telegraph, or to this, that and the other. Quite true, but they were so drawn that as the affairs of the nation progressed, the opportunity for the Supreme Court of the United States to deal with them was preserved and that is what I am asking for here. That word "framework" has just that purpose, to my mind. I have another thought with reference to it. I am of the opinion that our appellate courts in large questions of this character, very frequently, if not always, reflect — when you take their decisions, by and large, they reflect public sentiment; they reflect the general view which men take of the questions under consideration. Certainly that was true with reference to our Supreme Court, and I take it that it would be true here. I will trust to — shall I say? — a John Marshall in our Court of Appeals to breathe some breath of life into the word "framework" and regard it as representing debatable ground that must be thought over and threshed out.

Now you see, Mr. Wickersham, Mr. Chairman, in his amendments to the proposed bill would take that right away from there. He would introduce a definite, precise notion that the Legislature can deal only with the elected officers. And then by the further amendment presented this morning Mr. Wickersham would leave with our local authorities the right and power to deal with local government. Personally, I should not favor such a provision for a single moment, indeed, this is precisely the thing I should oppose. This is the field in which I earnestly advocate the preservation of the sovereignty of the State. All of this belongs to our organic proposition, that is the true philosophical charter of the city. This has no place in an administrative code. Now you gentlemen that do not come from New York want to understand that there is a problem within a problem here. The problem is not simple. It is complicated. I wish there were more in this chamber to whom I could address my explanation of this thought for it is of peculiar interest to those who do not come from the city of New York. Our problem is complicated; it is complex. "Complex" is a better word. There is a problem within a problem. How many men outside of the city of New York have a very definite, clear conception of the proportions, or sense of proportion, down there in that city? There were two or three lines of thought that occurred to me. Take the population. While you have a population of five and a quarter millions, I think, in the city to-day, and about two and a half millions of that is in Manhattan, about two million is in Brooklyn. Now see the various conditions that arise. Up in the Bronx they have about half a million, down in Richmond about a hundred thousand, and in Queens over four

hundred thousand. Now, even that does not bring the picture to your minds, gentlemen. You want something that will give you some notion of the density of the population. Now let me express it just a little differently. You realize that in the borough of Manhattan, the density of the population is expressed as being about 200 people to the acre. Over in Brooklyn it is about forty people to the acre. In the Bronx it runs about twenty; in Queens about four, and down in Richmond about three people to the acre; and in Queens, four people to the acre, as I say. Now the thing I want to bring to your mind is the varying conditions that must be dealt with here. You have other things; there are other factors which can be mentioned to indicate to you the magnitude of this problem. You take the question of sewers; take the question of streets; the question of parks; the bureau of vital statistics, which is part of the health board system. All of these things enter in a way that perhaps at first blush you would not recognize. But I have recognized it because I have been through it. I have recognized it because I have been in the conflict and in the contest. But when you contemplate such a community as Brooklyn, with its two millions of people — policed, yes, but without a commanding officer of the police force there; when you contemplate such a community as two millions of people — with a fire department, yes, but no commanding officer of the fire department there; when you contemplate a community of two millions of people developing diseases, developing contagious diseases, developing conditions that are prejudicial and dangerous to the community continuously, as they must, and realize there is no head of a health department there; why, you see the problem that confronts us. Such was the condition of affairs which we struggled to correct by a revision of the former charter of the city. It was because of that struggle perhaps, and because I then felt constrained to introduce a minority report, that the question seems to recur now with so much force. These evils have been corrected. They were corrected by appropriate legislation. Each borough has an appropriate official in charge of the Police Department, and some ludicrous incidents which formerly occurred are no longer possible. I recall a little society in one of the boroughs that desired to attend the funeral of one of their members in a body, and asked permission to parade. The Police Department granted the appropriate permit, but, being administered from Manhattan, two hundred and fifty policemen were sent as an escort for less than fifty citizens, indicating an entire lack of familiarity with the prevailing conditions. So we found that in the administration of the board of health a physician would meet a doubtful situation, etc.; it would seem to him that a contagious disease was about developing;

he might suspect typhoid, or what not. Wouldn't you think in a community of two millions of people there should be some expeditious system enabling him to submit specimens and have an appropriate analysis made and obtain the report? But no. The centralization idea of having one administrative and executive office in Manhattan was developed to such a point that in our community of two millions, patients were dying before the physician could get the report of the board of health. We have corrected it now. We are in better shape now; but we have our central office over there. So it was with the tenement house department, with the building laws. A man wants to erect a building and submits plans. Now see what this proposition which emanates from General Wickersham does. He would tear down all that we have constructed through these years of work in this Legislature, taking all those things and throwing them into the melting pot of the board of aldermen, leaving us to get what we could from a further struggle.

That brings me back to the word "framework". And if you say the word "framework" does not cover any such things, then I say perhaps we have selected unwisely. But one thing I want to make clear, what it is I stand for, and what underlying proposition I aim for in this measure. And I want to get that proposition before this Convention and in some form, by some appropriate motion, ascertain the views of this Convention with reference to these underlying thoughts. There are other and further illustrations of the general scheme of this measure but perhaps I have gone far enough at present for the purpose I had in mind. Now here we have the feeling that we have from this Committee on Cities a very carefully thought-out measure. Not an amendment I have heard appeals to me unless it be one that was suggested by Mr. Louis Marshall. What he said with reference to the word "business", here, impressed me very forcibly, and I am not so sure but that upon further consideration it would be wise to eliminate that word "business", in order to avoid the possible dangers which Mr. Marshall pointed out. But such a suggestion as that, only leads to the criticism of language and at this moment I am not dealing with that question. This language can be improved, I know that. That is not a difficult thing to do. What I am after is to lay the foundation here of the broad principles underlying this bill and to bring before this Convention the fundamental question, to what extent are you ready to relinquish the sovereignty of this State over any of its cities in any manner whatsoever. Does the platform enunciated by Joseph H. Choate twenty years ago constitute the platform on which you will move a home-rule provision at this moment? Has something happened in these twenty

years which leads you to think a new rule is needed? But until the Committee of the Whole has come to a conclusion on that subject it seems to be useless to deal with fine shades of meaning of a particular word or phrase. I stand for the proposition that has come from the Cities Committee. I think this represents the consensus of thought prevailing in the Convention of 1894 and is based upon the principles laid down by Mr. Choate at that time and embodied in the work of that Convention. We recognize throughout the sovereignty of the State and the difference between the organic portions of the charter and the administrative portions of the charter. We provide that the former must be dealt with by the Legislature and that the Legislature may not intervene at pleasure — the initiative must come from the city, — except that the Legislature may operate in an emergency through the special law leaving the administrative functions to be dealt with by the local legislature of the city, and I commend, Mr. Chairman, the general proposition in this bill to your favorable consideration and to urge you to cast out the notion of debating any proposition which for a single moment contains the lurking danger of allowing the city to throw off the sovereignty of the State. Such is my criticism of giving to the city the election of whether they should have home rule or not. I am not willing to give to any city the power to say when and to what extent it shall cast off the sovereignty of the State. That I want to preserve and for one city to say we will throw off the sovereignty of the State there and for another to say we will throw off the sovereignty of the State here, is not scientific, to my mind nor in consonance with the fundamental principles which we have included in presenting this proposition before the Committee.

Mr. E. N. Smith — I have been trying to gather your thought and I want to ask this question, whether or not it was in your mind that by granting the extent of home rule to the city of New York which has been suggested by some of the proposed amendments to the report of the Cities Committee, you have a fear that you may be destroying home rule within the boroughs in the city of New York?

Mr. Latson — The difficulty in answering the question lies in the use of words. I don't know what "home rule" means, but I will answer the question best by saying that if home rule means some degree of independence from the sovereignty of the State, that doctrine could not possibly apply except in the inverse form to the relation between the sub-unit of a city to its lesser units of a borough. If the doctrine of home rule is founded on some scientific principle, I have not heard it enunciated. If it is founded on a principle of population and it is thought that a community

of five and a half millions should be permitted to govern itself, then I ask you why not also a community of two and a half millions, or a community of four hundred thousand, or a community of one hundred thousand? We have small cities of ten thousand. If each is to cast off the sovereignty of the State, why should not the principle be carried along into the relation of the boroughs of a city to the city itself? Thus each borough in the end would cast off its sovereignty. What an unscientific proposition is thus presented.

What I was pointing out in this doctrine of home rule, by some of these amendments, particularly those that I referred to before, as General Wickersham's, suggested by General Wickersham, the application of home rule under these amendments would create the greatest degree of trouble and confusion in our city of New York because of its organization into sub-units. It is a situation which it is very hard for men outside of the city to realize, but there are men sitting within reach of my voice here in this room to-day who realize that that question is not political. They know it is not partisan. They have seen me stand right here by the side of the late Senator Patrick Henry McCarren and argue for the same proposition of borough autonomy, if that is what you mean by home rule, arguing before the joint committees of the Senate and Assembly, for what I am talking for. What was the great strength of Senator McCarren, and why do they honor his name to-day? Because in all of his political affiliations, in all of his conceptions of political organization he demanded that the boroughs be separated from the domination of the city, and his name is held in veneration by his own party in that city to-day and by other men outside his party, because he stood for that proposition. Do you realize to-day, that while we are sitting here, down there in that city and borough the same question is up for consideration, and the question they are debating down there now is, shall the Democratic party of the borough of Brooklyn be subservient to the Democratic party of the borough of Manhattan or shall there be borough autonomy? And shall we have a Democratic party here free to act as opposed to a Democratic party in the borough of Manhattan? The question, I say to you, Mr. Chairman, is not partisan, it is a question with relation to the great communities of people bound together by legislative ties and grown together because they have certain interests. But we must always remember that their interests are not in all respects uniform. Mr. Chairman, I am keeping Mr. Smith standing, but he started me off on another line of thought and I hope he will bear with me a moment while I illustrate this, the very vast differences that exist in these separate communities. I remember

that my attention was called to this great aggregate of laws made up for these five boroughs: a man came over to Manhattan to see me, from Richmond, and he said, "You know you can't drive cows down through Broadway or Fifth Avenue, there is an ordinance there against driving cattle on a public highway. Well, we all went together as a city and I lived down in Richmond and I can't drive my cattle to pasture without being arrested." The incident simply illustrates the difference in prevailing conditions. It is hard to realize that on Staten Island there is said to be a little patch of virgin forest nearly three hundred acres in extent, and this is within the city of New York. The varying problems thus presented render the application of the doctrine of home rule extremely difficult.

Now the answer to your question, Mr. Smith, is this: If home rule means that we are to be so reorganized as to please the particular whim of each incoming board of aldermen in the city of New York, if these boroughs are to be dealt with on a varying theory and scheme of government, as those boards see fit, I say no. If the Legislature, preserving the sovereignty of the State, shall prescribe the form of government and the framework, leaving it to these local authorities to carry out the administrative functions under that framework, I say yes.

Mr. Wickersham — I simply wanted to ask if the gentleman would define what he understands the words "framework of government" to mean?

Mr. Latson — I shall be very glad to. I spent, I think, half an hour on that word and I will be very glad.

Mr. Wickersham — Mr. Chairman, I did not want to ask the gentleman for half an hour —

Mr. Latson — Mr. Chairman, I hoped that I might attract the attention of General Wickersham in conversation, because I used his name three or four times in my remarks —

Mr. Wickersham — I was listening.

Mr. Latson — And I will very gladly deal with that question once more because it came up through General Wickersham and if it is a difference in the construction of words, I have a degree of diffidence — and I start out with the proposition that I am probably wrong.

Mr. Wickersham — What I wanted to know, Mr. Chairman, was what was the delegate's understanding of that term, because I think we are more likely to approach agreement if each of us understands alike what the words mean.

Mr. Latson — That is the burden of my song. Let us stop talking, if we possibly can, about mere words and phrases and let us see if we can find fundamental doctrines and then we can surely find the phrases, Mr. Wickersham. My theory and Mr.

Wickersham's show a marked difference. His amendments destroy my conception of the bill. That led me to analyze the word "framework" and I will do it again just as you have asked me. I reiterate the fact that in an attempt at revision the thing we did was to try to make an organic charter and an administrative code. We went over it somewhat in detail and you probably remember that I was engaged in that work. The use of that word "framework" is very closely correlated to my education at that time in the work I was doing. I had in mind that the word "framework" would apply to that organic portion — what would be called the form of government, the scheme of government, the nomination of the agencies and instrumentalities of the city, the correlation of their powers, legislative and executive, etc.; and further, I conceive, Mr. Chairman, that that word "framework" would go somewhat further and has to deal with the question of large departmental functions, such as the functions of the health department, the functions of the tenement-house department, the factory law bureau, and such as the functions of the bureau of vital statistics, and I would mention the police department, and the fire department and all of those things, in so far as it dealt with the administration of those matters in and throughout the various boroughs, we are dealing with a part of the framework. If that is not the true significance of the word "framework" I have not the true conception of the thought. If the board of aldermen attempt to take a deputy police commissioner out of the borough of Brooklyn, I want to feel that they are touching the framework; or if they want a central office of health over in Manhattan and say send your specimens over to us in Manhattan and we will give you an answer concerning it after the patient dies, I say they are touching the framework. If you do that you are taking out the very heart of the thing I am aiming for. If it were not limited to the elected officers but embraced the appointive officers, that would be within the organic portion.

Mr. Wickersham — Let me put this suggestion: Suppose we leave out the question whether elective or appointive. Suppose we say the numbers, power and method of selection of the officers, boards or departments among which these administrative functions are distributed by this charter, would that be the framework of its government?

Mr. Latson — Mr. Chairman, I am going to give to General Wickersham what may seem to him to be an unsatisfactory answer; and yet if you will allow me to amplify my answer slightly he will understand it is not intended to be a curt answer. I don't know. And if I go a step further I would almost say that just at the moment it is not the problem which confronts

me. I recognize something elastic. I don't want to be rigid, and I don't want to draw the line so hard and sharp that there can be no elasticity. I want to be able to allow the Court of Appeals to deal with the general scope of that proposition, with the elasticity involved in a word that has a significance and yet is not rigid, just as our delegate, Louis Marshall, pointed out to us the other day, the Supreme Court dealt with the words "interstate commerce." If there be something that is not in our contemplation at this moment, but may arise fifteen years hence — as Mr. Marshall pointed out with reference to the telegraph, the telephone and the cable coming into existence since 1787 — will that word "framework" be broad enough and elastic enough to leave with us the sovereignty of the State within the field that I have indicated?

Mr. Wickersham — If I understand you want to put in a word whose meaning is wholly undefined, which any court hereafter may apply in any way it chooses to guess, and you mean to go to the people of the State of New York and say that we have given them home rule for cities when we have given them a word which we cannot define, which no court can define and which may hereafter involve the whole State or may come down to a microscopical interpretation. The question I want to ask is whether the people of New York are going to be satisfied with that?

Mr. Latson — It may be, Mr. Chairman, that the distinguished jurist can give us a word better suited for the purpose. But what I am interested to know from Mr. Wickersham is whether or not he agrees with me, with the fundamentals for which I am standing, and if he and I are in perfect accord with reference to our objective point, I doubt not we will find a word which will express that thought; but if there be, lurking back of the dispute as to words, some difference as to the thing we are after, the fundamental thing for which we are standing, I want to know it. I think of no better word than *framework*. The word was not mine, it was suggested by a man of distinguished ability; it was after that word had been thought of and described, a gentleman of wonderful education, analyzing that whole subject; and handling the words we suggested, said here is a better word. And we said we guessed it was and we all agreed that that word was better suited than any other offered. If Mr. Wickersham can give us a better one, we want it.

Mr. Wickersham — I think the difference between us, Mr. Chairman, is simply this: That Mr. Latson and I cannot agree because I believe that we must confer something definite and we must to some extent take the city away from interference by the Legislature. As far as I can understand Mr. Latson's idea, he proposes the city shall never be taken away from the Legislature.

Mr. Latson — That is right.

Mr. Wickersham — That is, that there is no power that is proposed to be given by the Legislature which the Legislature cannot take back. Now, if that is the proposition, we cannot, of course, agree upon any words because our ideas are wholly irreconcilable.

Mr. Latson — Mr. Chairman, the General omits to emphasize in his statement all reference to the local affairs — the organic — and if he will modify his statement by introducing those words that I have over and over again introduced in my address this morning, he will far more clearly define my position.

Mr. Wickersham — Mr. Chairman, the speaker cited from the works of a standard author, Mr. Dooley. Let me also turn to that great source of wisdom. This idea reminds me of Mr. Dooley's famous proposition of dealing with Aguinaldo. Mr. Dooley said, "If he were in our ward, we would give him what he wants and then throw him down and take it away from him." And that is what we would do with the city. We would leave it to the Legislature to give them what they wanted and then throw them down and take it away from them.

Mr. Latson — Mr. Chairman, I am rather glad that Delegate Wickersham has made that remark. It is hard for me to say it, but I must say it, that it indicates that we of the Cities Committee have been doing a lot of work on this matter that the General has not yet undertaken.

Mr. Wickersham — That is so. I quite admit it.

Mr. Latson — And there are broad lines of demarcation there which the General will detect but which have not yet suggested themselves to his mind. There are three great classes of amendments before the Convention. Of course, perhaps the General has thought of these; he has referred to one which has not been argued on this floor yet; the class that is represented by the proposition of Delegate Ray Smith. That proposed amendment contemplated no more than to empower the Legislature to delegate to the city such of its powers of legislation as it might see fit. It was presented for our consideration because under the decision of our courts grave doubt has arisen concerning the extent to which the Legislature may delegate its functions, and the amendment was designed simply to throw off the constitutional limitation permitting the Legislature to delegate, at its pleasure, its own powers to the city. This involves the objection raised by General Wickersham, namely, that if the Legislature gives, it may take away. Those communities clamoring for home rule would be justified in asking what would be thereby accomplished. You give the Legislature power to give and it likewise has power to retake so that this constant meddling and tinkering with our affairs will not assist, but you have increased the field,

you give it a greater field to play in and things will be worse than ever before. That is the reason why this Committee did not present a favorable report on that proposition. I want to say that scientifically it is the best proposition that could be formulated, scientifically, because there you recognize the sovereignty of the State and you say it may delegate and retake and of course you have the purely scientific proposition.

Mr. Wickersham — Mr. Chairman, I don't know what the gentleman means by a purely scientific proposition by saying that this problem may be solved by empowering the Legislature to delegate power one day and take it back the next day. I call it very unscientific.

Mr. Latson — Mr. Chairman, it is perfectly scientific. It gives the Legislature certain powers and it is perfectly scientific to give to the Legislature that power, if you choose to do it, but if the gentleman had allowed me to finish my sentence he would have seen the application of those remarks. It has its practical side, as has every question with reference to the government of people and the practical side here is that the people of our community would not be satisfied if we left in the Legislature simply the power to delegate subject to the power to retake. It would be ample, theoretically, for all the purposes we have in mind. But our community, as a practical proposition, would never be satisfied with it. They want some grant from the Constitution. They want to be, in the city, sovereign in some field. Now, I think that by our bill we have indicated the field where we, the Committee on Cities, think the city should be sovereign, namely, with reference to their own local affairs, but not with reference to structure, the framework, the scheme, the scope of the government of the cities. That is a matter for the sovereignty of the State, not with reference to any city function; that is with reference to the sovereignty of the State, and we have attempted to draw that line, and I again say that it seems to me of the greatest importance that we should determine in advance whether that is the conception to which this Convention will subscribe, and then devote ourselves to the use of language; but my purpose, under these questions asked me by General Wickersham in that regard, my purpose is to indicate to this Committee of the Whole what is my conception of this measure, leaving it to some other members of the Committee to point out their conception. But this is my conception of this measure and that is the reason why I object to the elimination of the word "framework", the introduction of the word "government", all local government, and these amendments that have been suggested by —

Mr. Byrne — Mr. Chairman, will the gentleman yield? May I ask Mr. Latson to read again that first statement of Mr. Choate?

Mr. Latson — “I believe that the people of this State will never consent or ought never to be asked to consent to abandon their sovereignty over any division of a city in respect to any of its affairs. Now there are two evils to be avoided. One is the abandonment of the power of the State over the city. In my judgment, as I said when I began, the people of the State will never consent to that in any form. The other is to prevent if we can, constant, causeless, unchecked, indeliberate, unnotified interference with its domestic affairs.”

Mr. E. N. Smith — Mr. Chairman, it must be quite apparent to the Committee that this subject is one which largely concerns one city and that this interesting discussion which has been going on and the framing up of a clause in the Constitution with reference to the thought suggested in that discussion is making for a provision in the Constitution which does not have much application to fifty-two other cities in the State. Now I want to throw a little bit of different coloring upon the situation in order that we may have the viewpoint outside of the city of New York, because this constitutional provision, while designed to take care of a situation in the city of New York has got to be applied throughout the whole State of New York.

Mr. Wickersham — You say “got to be.” Why “got to be?”

Mr. E. N. Smith — What do you mean?

Mr. Wickersham — You say it “has got to be applied” to all of the cities of the State. Why “got to be?” Might it not be made optional with certain cities?

Mr. E. N. Smith — That is a point to which I have to come. I say in the present form. I used a bad word when I said “got.” I meant in its present form would have to be applied. Now, on this question of sovereignty of the State I do not think there can be any points of difference; that is where our trouble is and has been in the Cities Committee. It is right with the question of sovereignty, and from my standpoint, our trouble occurs out of the fact that we have been seeking to divide up an indivisible entity. It cannot be divided. That is where the trouble is with all our discussion, and whenever we overlook this question we proceed upon the wrong theory. Now we have also got to distinguish between governmental agencies or instrumentalities in a city and governmental powers which those agencies are to exercise. Our trouble grows out of the further fact that these powers are in their application in some respects local and in other respects are State and yet they are exercised through the same agency. Now, so far as I am concerned, I do not take much stock in the use of the words “home rule.” It is a phrase and a catch-word. What we have got to do, or ought to do, in this Convention is to find out what the difficulties are, what the real

troubles are and deal with them. Now what are they? In the cities outside of the city of New York, possibly outside of Buffalo, there isn't very much trouble anyway. I cannot speak for all of the cities but I understand that in the second-class cities they are substantially satisfied as things now are. I understand that Rochester is not very seriously disturbed about the present situation and I know, or I feel I know, that most third class cities are pretty well satisfied. Now, why is it that they are satisfied? It is because the Legislature, in reference to them, has gone the limit in the delegation of power to cities.

We do not have much trouble. We do not have to come to Albany to take care of salary questions. Why, in our little charter, there is not a single provision as to salaries except as to the salary of the city judge. We fix our own salaries. And so it is with all the rest of these cities. We have been granted great powers. I am going to read, for the benefit of this Committee, our general grant of powers, and it is not a grant of powers confined to one city, because it is a grant of powers contained in almost every third class city charter: "The common council shall have power to provide by ordinance or resolution for the enforcement of the powers hereby expressly granted to it or to any boards or officers of the city where the method of the execution of the powers is not herein expressly prescribed, and shall have power to pass any ordinance or resolution not repugnant to the Constitution or to the laws of the State and not prescribed herein or inconsistent herewith for any local purpose pertaining to the government of the city, the management of its business, the preservation of the order, peace, health, safety and welfare of the city, and the inhabitants thereof, and shall have such powers of legislation by ordinance or resolution as are conferred upon it by this act or by other law. But this general provision shall not be construed to authorize the raising or expenditure of money excepting as herein expressly provided." Now that is contained in our third class city charters, for the most part. Now in what is called the Cullen Act, Chapter 247 of the Laws of 1913, is a broad general grant of powers, to all cities. I will read the general grant of powers:

Mr. D. Nicoll — What act is this?

Mr. E. N. Smith — The Cullen Act, Chapter 247, of the Laws of 1913. It reads: "Every city is granted power to regulate, manage and control its property and local affairs and is granted all the rights, privileges and jurisdiction necessary and proper for carrying such power into execution. No enumeration of powers in this act or any other law shall operate to restrict the meaning of this general grant of power or to exclude other powers comprehended within this general grant." Now, what is our

trouble? We have all the powers granted to us that the Legislature can grant, but what is the trouble? There is not a corporation counsel in the State of New York construing these charters or construing this general grant of power who does not come to the same conclusion that Mr. Carmody, the Attorney-General of the State, came to, that the Legislature was attempting to delegate and extend powers which it had no right to delegate. So our trouble is not, as far as cities outside of the city of New York are concerned, with the lack of disposition on the part of the Legislature, but rather on account of a lack of power on the part of the Legislature. The Legislature ought to do, or ought to be able to do, just exactly what has been done with reference to counties. I have not that section before me, but the Constitution now provides as to counties that the Legislature may delegate to counties such further powers of legislation as it may from time to time deem expedient. Now if that clause were in the Constitution as to cities, then all these great powers which have been granted to cities would immediately become operative and we would have real home rule which in no wise would interfere or tamper with the sovereignty of the State. Now, they talk about giving something and taking it away. The Legislature never takes anything away from the city, as a rule, which it has given. It has never taken anything away from us. The trouble under our suspensive veto plan to-day is not that the Legislature is pushing anything upon us but that it is apt not to consider sufficiently the matters which come up from the localities for its consideration.

Now, we have a different situation down in the city of New York, as I understand it. It has been more clearly disclosed to me to-day by the talk of Mr. Latson, showing that it has a different situation growing out of the fact that the city of New York is made up of five full counties, whereas every other city of the State is made up of a part of a county. Now, it is going to be utterly impossible for us in dealing with cities to spread out the governmental functions of this State through the agency of cities, as these functions are and must be continued to be exercised through the agencies of counties, and that is another one of our difficulties. Now, what is the trouble down in the city of New York, as to the Legislature? I do not think the trouble is constitutional at all. I think it has been largely political. And what do they want to get rid of? What has been the complaint before the Cities Committee from the city of New York? Why, it has been about salaries, about mandatory laws fixing salaries, and things of that kind; about instances where the Legislature — a very few instances — has imposed upon the city laws which were not approved by the mayor of the city. Why not get rid of

those conditions? Why in order to get rid of these difficulties impose a measure which is going to inflict great trouble, in my judgment, upon the other cities of the State? Now, I am a member of the Cities Committee and in general I am perfectly willing to see the greatest measure of local government, commensurate with the welfare of the State, granted to cities. There is no disagreement in the committee on that subject. I reserved to myself, however, the right to make some suggestions in reference to the application of this bill to other localities than the city of New York. Now I want to call your attention to one thing which is not particularly connected with, but which is involved in, Section 4, and that is the question of limiting indebtedness or powers of taxation which is the duty of the State, under Section 1 of Article XII. The present provision of the Constitution is that "it shall be the duty of the Legislature to restrict the power of taxation, assessment and borrowing of money, and the contracting of debts by municipalities so as to prevent abuses in assessments and contracting debts." Now, so far as cities in the State having a population of over 100,000 are concerned, the Constitution now limits the power of creating indebtedness by providing that "the amount hereafter to be raised by tax for county or city purposes in any county containing a city of over 100,000 inhabitants or in any such city of this State in addition to providing for the principal and interest of existing debts shall not in the aggregate exceed in any one year two per cent of the assessed valuation of the real and personal property in any such city. That, as I say, applies to counties or cities having a population of over 100,000, but it does not apply to any third-class city of the State.

Now it is proposed under this measure to remove that provision excepting as it is to be applied to general laws. Well, now, it cannot be applied through general laws to about fifty cities in the State for the reason that the conditions in one city differ so much from those in another. In other words our taxation is limited to 1.70 for city purposes, if you please; that may be adequate for us but it may not be adequate in other cities of the State. The limit of two per cent for State, city and county purposes might be adequate for the city of New York but it would not be adequate in our territory where the rate is 2.66. So you cannot by general laws fix that matter involved in section 4 of this bill.

Mr. Sanders — Who is best able to determine what is adequate as the limit of taxation in a particular city, the Legislature or the authorities of the city?

Mr. E. N. Smith — The Legislature itself, enlightened by a knowledge of the conditions of the community. The power of

taxation is a power that must remain a State power, and the duty of the Legislature to restrict as to taxation and indebtedness in this provision, which I believe has been in the Constitution since 1846, is a duty which the Legislature should retain the power to perform if we are going to have any safety at all. You remove this restriction on cities and they would run wild. Now, you must remember that, as to the city of New York, different conditions may prevail. Maybe you are able to hold down the debt-creating power in the city of New York, but I doubt whether we are able to do so without the help of the State in the smaller cities of the State and I do not know that the city of New York has done a very good job itself in that regard, even with the limitations contained in the Constitution. I am not going into the question of the framework further than to say this, that if Mr. Wickersham's proposal as originally introduced were incorporated in place of the word "framework" you might just as well destroy our city government, for the reason that we have all our administrative functions—and most of the smaller cities are the same—divided up into departments, whereas our common council exercises practically none but legislative functions—passing the budget and confirming appointments by the Mayor—while the administration of our affairs is handled by various departments. Now you take away this word "framework" and leave power in the cities to make changes in regard to every local department except over elective officers and we might have our whole organization destroyed, according to the conditions of changing administrations. It would afford an opportunity for ripper legislation, the like of which was never known throughout this State. I haven't much fear about the word "framework". I think it is a pretty good word and I think it about expresses the idea in the minds of the people.

Mr. Wickersham—Will you define the word "framework" as you understand it?

Mr. E. N. Smith—I understand the word "framework" to be the outlined form of government as distinct from the powers of government which are to be exercised through the agency of that form. I think it is intended to mean just that. It is the structure of government. If you take that word out you interfere with the present opportunity for administration, if you please, through the borough system. I do not say whether it is a good thing to use the borough system or not; I do not know anything about it. Another thing I want to call the attention of the Committee to is this provision as to the general election on the adoption of a charter, which is mandatory upon 54 cities of the State at the election to be held in 1916. I do not think the cities of

the State want that. Why should they be compelled to vote upon the proposition, "shall a commission be appointed to revise the charter of the city? Why, our city has been a city for the last fifty years and we have had only one revision of our charter in fifty years. Why should we be compelled to vote every eight years upon that proposition?

Mr. D. Nicoll — Would not your objection be met if you changed the word "shall" in the 9th line to "may", on page 5?

Mr. E. N. Smith — I don't quite know — Yes, it would be, if —

Mr. D. Nicoll — That would meet the whole situation.

Mr. E. N. Smith — Yes, that would meet my present situation, but that is not in this bill.

Mr. D. Nicoll — No.

Mr. Latson — If the word "may" were substituted for the word "shall", will you have the kindness to tell me how the initiative in that regard would be provided for, and how a city enthralled by a hostile administration, unwilling to initiate a method of revising the charter, could ever throw off the yoke?

Mr. E. N. Smith — Mr. Chairman, in answer to that question I would say that from general conditions up the State, we do not contemplate the horrible condition which Mr. Latson has detailed, and that could be avoided simply by providing that a revision could be had, or the question in respect thereto submitted upon petition signed by a certain percentage of the voters of the city.

Mr. Latson — Is it not a fact that you realize that the Committee on Cities, in designing this provision providing for a recurrent question, shall the charter be revised, regarded the term of eight years, as a matter of no consequence in connection with the bill; and is it not a fact that the committee felt that the period of time, whether it be eight years, ten years or twelve years, was not a vital feature, but that the committee were aiming to produce a provision by which the city automatically could say whether or not it shall have a revision of the charter, and not be dependent upon the initiative of those that the city would like to throw out of office, to amend its charter?

Mr. E. N. Smith — I understand that that was the view of the Cities Committee and with that view I am in perfect accord.

What I am objecting to now is the idea of mandating cities throughout this State who are perfectly satisfied with their conditions, with the necessity of passing through this rigamarole of taking three or four years to revise a charter, whether they need to revise the charter, or not.

Mr. Latson — Unless, Mr. Chairman, the delegate feels that I am annoying him by these questions.

Mr. E. N. Smith — You cannot annoy me by any questions on this subject, I feel perfectly sure.

Mr. Latson — Mr. Chairman, do I understand that the delegate is pointing to the possibility that not all of the cities present the same problem, and that any attempt to prescribe for the evils of one city, without a general prescription for other cities wherein the same evils do not exist, may present by analogy some such situation as I have pointed out with reference to the city of New York where different types of life and condition in the several boroughs make the formulation of a uniform rule impossible.

Mr. E. N. Smith — Mr. Chairman, I do not know that I grasp the full import of the question. As the gentleman knows, I do not care very much for the referendum anyway. I don't think it is a feasible proposition to submit ten thousand laws, concentrated in one charter, to the people of the city of New York, and ask them to pass upon them and expect that they are going to be able to pass upon them intelligently. But, however that may be, and the point that I am now going to make is this, that I do not think that it is wise for this Convention to impose upon 54 cities of the State of New York, the obligation, even if the right is given to them, to hold a meeting for the purpose of revising the charter in the year 1916; nor do I feel that there should be a mandatory consideration of this subject every eighth year. Now, I want to talk about this provision in reference to the draft of a charter a little more. This clause giving the city the power to amend its charter is either intended to comprehend within that power the power of amendment only as to the specific grant of powers, that is, as to local affairs, or it is intended to comprehend within its scope, the power of the city to adopt a charter as to all affairs, whether they are local or whether they are of State concern. Now let us see. I do not understand that I have had consistent answers on that question. On the one hand it is said that the power of the city, under this bill, to adopt by this method a charter, is limited in the exercise of that power to the general grant of powers as made in the bill itself. Now, with that I am entirely content from the standpoint of legislation by the State, because it comes down simply to this, that you adopt an administrative code. But, how is it going to be possible to adopt a charter relating to these local affairs, when the agencies through which the city powers are being exercised, are the same agencies through which the State powers must also be exercised.

Mr. Low — It seems to me that that line of argument overlooks the fact that the power granted to a city is to revise its charter, the charter that it has, and that every city has and will keep all the powers contained in its present charter, already given to it by general laws, or by constitutional grant, and when it comes to revise

that charter, it can revise its form of government in any way that it pleases, subject to submission to the Legislature, as to annulment, so as to administer in the way that it wants to that entire grant,— what is in its present charter — what is coming to it by general or special laws, and what is comprehended in this proposed grant?

Mr. E. N. Smith — Mr. Chairman, I understand Mr. Low's interpretation of the provisions, and now I will treat that interpretation of it. If it is intended that the city may revise its charter in all respects, subject only to the power of annulment, what sort of a condition have we created in legislation? This is one of the things that I have objected to, that is, the question of annulment, except as to local matters. Now, if you are going to extend the charter-making power to matters of State concern, as well as to matters of city concern, you have this situation: The charter is amended, or revised by the city. It is revised as to all matters as to which a city operates, taking over the State agencies, taking over the local agencies, taking over State affairs and taking over local powers, and it comes up to the Legislature and the only power of the Legislature is the power of annulment, and if one house of the Legislature refuses to annul, the effect of it is that the Constitution of the State has permitted a condition wherein State functions can be created in a city government, and State agencies for the exercise of State powers created therein, not by legislation of the State itself, but by the mere negation of legislation, as to which the State government as such has no power of affirmative action whatsoever, and which will operate even when one branch of the Legislature, say the Senate, should say no — and the other branch merely fails to act. It is a condition in legislation that is full of danger. Look at the Constitution to-day and look at the restrictions which are cast by the Constitution around the exercise of the powers of legislation by the Legislature itself, and yet under this provision as interpreted by Mr. Low, as to seventy per cent of the population of this State, it would be possible to legislate without any of the restrictions now cast about the Legislature in reference to State legislation. Now, it is an anomaly to me, if Mr. Low's interpretation is correct. If Mr. O'Brian's interpretation is correct, I do not object, because it is limited to local affairs, but if it is going to take in the whole range of legislation as to matters of State concern, gentlemen, you can see we will have created a new sort of legislation as to the agencies through which the State functions shall be exercised, and as to those functions vested the Legislature with power to legislate only by general laws. Now, that means what? General laws. Of course, the State has the power now under general laws and that brings me to the other

point, that if the State is limited in its exercise of power by general laws, this results in a concentration of power in Albany, which will make this bill look like the denial of home rule to every locality; we have had in this Convention a number of illustrations, the first question coming up being in the educational field. The educational interests of the State look upon the home rule proposition as a matter full of dynamite, dangerous, and, therefore, they have proposed to get education out before the storm breaks by establishing boards of education as public corporations, with powers of taxation. That is the first effect, an additional concentration of power, as to education in the State. I know that education is a matter of State concern, but one of the most valuable things in connection with State education is the fact that the localities are so deeply interested and so closely participating in that education. We come now to another concentration, under the head of taxation. It is all right, perhaps, to say that that is not a home rule proposition. I am not objecting to it. I think there are certain reasons why there should be a greater concentration of powers as to taxation, but I am looking at the agencies of taxation. As it is now, we have powers of local taxation; we have our own collectors of taxes, our own assessors, and probably will have them in the future, but the power in reference to the matter is to be concentrated, if you please, at Albany, and if these provisions as to home rule, without any legislative restraint, are introduced into the Constitution, we, I fear, will experience further concentration of power at Albany. Now, I have said about all that I care to say on this subject, but this provision as to revision of charters has troubled me much. As I have said, when you come down to the last analysis of this question, it is largely a question for the people in the city of New York to decide for themselves, what manner of government they will take. Now, we recognize this great city. I do not like to have the great city all the time raising up the idea, however, that we hayseeds up the State are imposing burdens upon them that we ought not to. It is not very pleasant to us to feel up-State that we are wards of the city New York, because we are not. We are paying our proportion of taxes.

Mr. Low—Is it not the fact that this movement has come from the Conference of Mayors, representing all the cities of the State, and that the bill drafted by that committee was drawn, perhaps, more than by any other one man, as I understand it, by the corporation counsel of the city of Albany. This shows, as it seems to me, that, including the city of New York, the second class cities, or some of them, and substantially all of the third class cities, want the Convention to take important and very radical action, if their requests be followed, on that subject. And the

members of boards of aldermen or common councils in almost every one of the small cities have passed resolutions endorsing the action of their mayors.

Mr. E. N. Smith — Mr. Chairman, in reference to the Mayors' Conference proposition. This Mayors' Conference is a voluntary association of mayors, and all I ask the committee to do is to read over the bill which they suggested for the consideration of this Convention, and see whether they want to delegate to any body of men, made up as this is, such extraordinary powers as they seek to have transferred to them known as the O'Brian bill, the J. L. O'Brian bill. I have not much use for what is known as the Mayors' Conference. I know something about it. I do not want to go into details, but when you come down to the Mayors' Conference, you will find that the bill was drawn by a number of people down in the city of New York and impressed upon the mayors, who did not give much consideration to the subject. All that actuated them was the general idea, "Of course, we would like to have more powers to ourselves and anything that will give us additional power is a satisfactory proposition". But, this Mayors' Conference proposal is not the result of the deliberate actions of the mayors of the cities of New York. I do not care to go into the proposition, but I know what I am talking about on that subject, and I know you will find that that bill was prepared not by the Mayor's Conference, but by a number of men representing civic organizations, who are engaged in a theoretical way with the affairs of state, and who are able on theory to advise as to the government of the State, but who have had very little practical experience in the management of the affairs of the State. I do not pay much attention to them, except to find out what the real trouble is, and if we can treat that real trouble, we will have solved this problem, without in any way impairing the sovereignty of the State.

Mr. Weed — Mr. Chairman, I desire to say a few words on behalf of the bill which has been proposed here by the Cities Committee. I was a member of that Committee and took part in all its deliberation. The subject of home rule was approached by very many of us from the standpoint, I think, certainly on my part, of the ordinary members of one of the cities of the State. Some of us, at least, have not had any such training in the subject of charter drawing as some of the gentlemen who have sat on charter drafting and revision committees. Others of us have not been in the Legislature, and some of us, I think, have had no official positions whatever. To us, the subject of home rule was a very distinctly and clearly defined idea, and when gentlemen say they don't know what home rule means, in view of all the agitation

that has been going on in this State, certainly during the last few months, and in view of the requests that have been sent to us by this organization of the mayors of the State, I cannot quite understand why he should not understand what it means. It has been illustrated here in the course of debate. It means, as I understand it, that each locality shall, so far as possible, consistent with some superior government, have the control of its own local affairs. Mr. Latson has illustrated the fact that the boroughs of a city, for certain purposes, desire to have control of their local affairs, and certainly, as I have mentioned, this demand from the cities indicates that the cities desire that they should have control of their own local affairs, as against the Legislature, and why? Just as the boroughs of the city of New York are more familiar with the needs of that particular locality, so are the citizens of each city of the State naturally more familiar with the needs of that locality against the aggregation, or the body of gentlemen, drawn from all over the State, and who constitute the Legislature of the State of New York? I take it that the gentlemen from the northern part of the State can have but little conception of the needs of the city of New York and the legislators of the city of New York can have but little conception of what is needed in any other part of the State. So, that, I think, that the idea of home rule is a clearly defined one; that is, that each locality, so far as possible, shall have, by reason of its greater knowledge of the needs of that locality, the control of its own local affairs as against some superior form of government. Now, while we have this clear and definite idea of what home rule means, yet when we came to the proposition of carrying out that idea, an idea not difficult, as I say, to comprehend, yet when we came to the proposition of carrying out that idea in relation to the control of the city governments, we were certainly met with difficulties which seemed to increase and which seemed to be more insistent, as we debated and discussed the proposition, and that difficulty, Mr. Chairman, I understand, arose out of the fact that in the State of New York you have two separate jurisdictions; one the jurisdiction of the State and the other the jurisdiction of the city, operating, not through separate agencies, but operating largely through the same agencies. So that the conflict goes beyond the effort to define how far those agencies shall act for the city and how far they shall act for the State. Now, this is illustrated in a slight degree by the creation and maintenance, certainly so far as the first department is concerned, of the Public Service Commissions; they are performing a function of the State and at the same time they are performing a very important function of the locality. And, on the other hand, in the department of health, in the city, you have that

department carrying out a very important function of government, in the preservation of health, not only of the city, but possibly of the entire State, by preventing the dissemination of disease, and when we come therefore, to define how these same agencies shall represent these different jurisdictions, you have to meet a great difficulty, as I understand it, that arises in carrying out this home rule principle.

Now, you get no assistance at all in the decision of this question from the United States Government, the form of the United States Government. There you have the two jurisdictions, the jurisdiction of the United States Government and the jurisdiction of the State government, but their spheres of actions are kept entirely separate. No agency of the United States Government is at the same time an agency of the State, and that is the reason why, there has never arisen, as I understand it, any serious conflict between the jurisdiction of the United States government and the jurisdiction of the State government, because their jurisdictions are so clearly defined, and more especially because there is no effort made by both of these governments to act through the same agency. Now, Mr. Chairman, when we got into the committee, as has been indicated here, and as I think must be very clear, there were a great variety of ideas as to how home rule should be granted to the cities.

We recognized that there was a loud call; we recognized that it was our duty in some way to solve this problem, which up to this time had not been solved; and while there have been some reflections cast upon the force of the call that is coming from the mayors of the cities, yet I think the great mass of this Convention, without the private information that Mr. Smith has referred to must recognize that as a very potent call, backed up as it has been by the action of the common councils of the various cities. So that I think we have a really strenuous call, outside of the action of any of these doctrinaire societies, which have been somewhat slightly referred to, but which I think are entitled to great consideration, because they have given some study to the subject. Now, recognizing that call, we came in with the idea of trying to solve this question. Now, one idea was, as expressed in the bill offered by Mr. Ray B. Smith, that the Legislature should have the entire control of this situation. He indicated and urged, as I understood him, that the reason that there had been a failure of home rule under legislative action up to this time, was due to the fact that the legislative power itself was so much limited, that it could not, under the constitutional prohibitions, confer upon the city the necessary powers for them to carry on their government, and his idea was that the situation could be met by extending the power of the legislature so that they could give this extended power to the city. As has been

well said here, the objection is that something might be given and something might be taken away. On the other hand, we have various forms of home rule suggested in various bills; some containing an exact definition of the powers that the cities were to have; others containing an exact definition of the powers that the State should retain, and others, in varying forms, lying in between these two suggestions. Delegate Honorable Judge O'Brien made the remark that the Committee had brought in a bill here that did not represent the courage of their convictions. Now, whatever may be said in regard to the courage of the Committee as a collective body, I am not prepared to refute or admit the charge, but I will say that so far as the courage of the convictions of the various members of that Committee was concerned, that if the honorable judge had been able to be present at our meetings, he never would have suggested that there was any lack of courage, or pertinacity, or perseverance in advocating the various views that they represented.

Mr. M. J. O'Brien — I only wanted to refer to or speak of the intellectual courage. I have no doubt of the personal courage of the members of the Committee. They had a thought but they did not carry it through. They have got a mighty effective provision in this bill which they have brought in, but they then proceeded to whittle it away.

Mr. Weed — Mr. Chairman, I might say so far as personal courage is concerned, that there never was any occasion for the exercise of it. In spite of the most strenuous conflicts, in spite of the arguments and debates that lasted throughout the meetings, there never, to my mind, was one single discourteous word spoken, that would arouse any spirit of hostility, in the discussion of the questions which came before the committee. Now, out of this struggle, whether it be a lack of character, or a lack of intellectual convictions, or whatever it may be, has come this bill which is now before this Assembly. And I think, Mr. Chairman, that the cardinal features of this bill, such as are commended, should recommend themselves to the favorable action of this Convention. Now, I understand these to be the three cardinal principles which are involved. First, That any amendment of any present city charter has got to come from the city itself. Now, I think that is a great step forward. The cities, as at present constituted, are not devoid of powers for carrying on their government. They have been carrying them on here for a century and more. Every city probably now has all the power that is necessary for the administration of its affairs, and I do not think there is any gentleman who can point to any city where there is a lack of proper government on account of the cities not now being vested with a power. Our only difficulty comes from the means and medium of the exercise of these powers.

They are tied down by certain limitations. They are put into certain departments and there is a lack of flexibility in the making use of the powers which the cities now have, and one of the objects of this amendment is not to so much create greater powers, but to prevent any interference with the powers that they now have, and that interference on the part of the Legislature is limited to a large degree by the Proposed Amendment presented, that any amendment of the charter should come from the city itself. Now, the next proposition, which I understand to be contained in this measure, is that there are certain powers, certain well-defined powers, that are vested in the city, and that the Legislature, under no circumstances, can take away, and those are the powers which are contained in this section 4. Now, I think that is another great step toward the insuring to cities of home rule in the management of their affairs. It is unnecessary for me to read that. They are here in black and white and any one who, I think, appreciates the English language must appreciate that there are great powers given to the cities under this bill which cannot be under any circumstances taken away from them. Now, the third feature of the bill concerns the manner of amendment to the city charter. I think that the provision is one to be commended in both of its forms. It offers great flexibility of amendment and it gives the people opportunity occasionally to voice themselves upon the question of whether or not they desire to have any radical amendment of their charter. In regard to the first feature, the first method of amendment, which provides that the city legislative body can make any amendment, if it does not interfere with the framework of its charter. It may increase salaries and it may increase officials. It can do anything that does not interfere with what is termed framework of its government.

Now when it wants to amend the framework of its government it has to have the sanction of the legislative body of the city and also the sanction of the State Legislature. How far that opportunity of amendment may be exercised we do not know, I do not presume that when this Convention passes some measure of home rule, and if it should be accepted by the people, that all the fifty-four or more cities in the State of New York, are at once, going to proceed to amend their charters. I presume they will not. I presume the most of them will live under their charters as they are at present constituted, but if there is any feature that does not conflict with the framework they can amend it, and if there is any that does interfere with the framework of their government, they can come to the Legislature, and in every period of eight years they will have the opportunity of saying whether they desire to have any radical revision or not. Now, it seems to me that is a great step for the granting of home rule.

But the gentlemen urge that these provisions for coming before the Legislature are provisions which operate to condemn this grant of home rule power. I do not think they do to any serious degree. I think, and certainly all the members of the Cities Committee, or I imagine they do, that the great body of members of this Convention —

Mr. D. Nicoll — On this subject of amendment on page 6; an amendment requires the co-operation of three different bodies, the legislative,—

Mr. Weed — It does in the city of New York; not in most of the cities; and may be in one or two others.

Mr. D. Nicoll — But in the city of New York it requires three; if in the city of New York we wish to amend our charter, we should have to get the consent by the affirmative of — first, the board of aldermen.

Mr. Weed — Yes.

Mr. D. Nicoll — Or whatever the legislative council may be.

Mr. Weed — Yes.

Mr. D. Nicoll — And then the Mayor, and then the Board of Estimate and Apportionment?

Mr. Weed — Yes.

Mr. D. Nicoll — So any one of these three could prevent an amendment to the charter.

Mr. Weed — Yes, that is the scheme. It may be meritorious or not.

Mr. D. Nicoll — I just wanted to make that clear.

Mr. Weed — Yes, sir.

Mr. D. Nicoll — And of course, your amendments have got to have a great deal of strength in order to determine whether or not you will get anywhere.

Mr. Weed — Well, I think that may be so or may be not. I think that is the meaning of the provision, but I understand that by the provision of the charter of a city,—

Mr. Latson — May I be permitted to say, Mr. Chairman, that the question whether or not the Mayor might wisely be vested with a power of veto to be over-riden by a two-thirds vote of the Board of Aldermen, or some similar provision, was under consideration. The bill as presented, however, represents the prevailing thought of the committee, although we recognize, Mr. Chairman, that a very serious question is here presented for consideration.

Mr. Weed — Mr. Chairman, it will probably be apparent to the members of the Convention, that however meritorious this provision may be, it certainly has this merit, that it prevents any one body from possibly depriving some other body, the mayor, for instance, of the powers that might be vested in him under

the charter. It would prevent, possibly, any effort on the part of the Board of Aldermen from depriving the Board of Estimate and Apportionment in the city of New York of their powers; and I think that one of the thoughts that the members of the Committee had in mind when they inserted the provision in the form in which it is contained in this bill was that each of these bodies should have the protection of preserving its own jurisdiction now granted by their several charters.

Mr. D. Nicoll — Assuming that we make a new charter in New York —

Mr. Weed — You mean in the general revision?

Mr. D. Nicoll — Of course you may never have these two legislative bodies, the Board of Aldermen and the Board of Estimate and Apportionment. You may have a charter with only one legislative body. You perceive that?

Mr. J. L. O'Brian — The bill reads, "Board of Estimate and Apportionment, if any."

Mr. D. Nicoll — Does it?

Mr. J. L. O'Brian — Yes.

Mr. D. Nicoll — Then I am wasting time.

Mr. Weed — "If any there be."

Mr. J. L. O'Brian — There are many cities in the State having only one legislative body at the present time.

Mr. D. Nicoll — What provision does it make for an amendment in case there is only one legislative body? Only the consent of that body?

Mr. J. L. O'Brian — And the Mayor.

Mr. Low — May I just remark in regard to Mr. Nicoll's question, and the doubt which he suggested, as to whether it would then be possible for the board of aldermen and the board of estimate and apportionment and the mayor all to agree. I would like to submit this thought, that as to all the minor changes they would probably agree without the slightest difficulty. The only difficulty would come when one or the other wanted to make some major change, and I submit, I think there is a consensus of opinion, as to such major changes, the city can very well afford to wait. It has got a very good working scheme of government now.

Mr. D. Nicoll — What do you mean by a major change?

Mr. Low — I mean such changes as to relations between the city as a whole and the boroughs, or in the idea that we had in using the word "framework," the administrative organization of the city. If they agree to the creation of a department of markets, it would seem to me they ought easily to agree upon that, and yet I should call it, if you please, a major change; the

abolition of the chamberlain's office. I think they can agree. It seems to me the city can very well afford to go without the one and to keep the other. But all the small, administrative, pin-pricking things that we now have to come to Albany about I think those bodies would wipe out of existence by unanimous consent as quickly as they have the chance.

Mr. Weed — Mr. Chairman, I was about to refer to the feature of the bill which made it necessary to go to the Legislature for the purpose of securing its approval by nonaction of these amendments to the framework, so-called, and also to the amendments to the charter. On that point I think the committee were — on that subject, the thought that is expressed in that amendment, to be more accurate, I think the committee were in agreement. We did not want to have any home rule amendment that was going to have the effect of establishing separate sovereignties in the city. We did not want to have any home rule amendment that was going to permit a city to establish a government for itself that was out of harmony with the ideas that the great mass of the citizens of the State of New York had in regard to the proper form of the conduct of city affairs as a general proposition. We did not want to have the possibility suggested by Delegate Marshall that a city would go into the drygoods business, or keeping candy stores, or doing anything of that sort. We do not want to have any possibility of their having such control that they could branch off into some radical measure that was entirely out of harmony with the general sentiment of the city of New York. And we do not have in mind only the city of New York when speaking of this proposition, but have in mind some of the other cities. I think there are some, if I mistake not, which have more radical ideas of government than even prevail in the city of New York. But the object of going to the Legislature was to keep the harmonious scheme of government all through the State, and the only body that could do that, under our system of government, was the Legislature, and that the power should be vested in the Legislature and should be retained by the Legislature to prevent some of these vagaries of government that might be possible in some of the cities of the State. Now, in regard to the revision of the charter once in every eight years. I think there would be only two means of bringing about a revision of the charter, if it were desired. You should have either a fixed date when that question can be passed upon, or have the initiative come from petitions by a percentage of the population. Now, charter amendments that have been inaugurated, as I have been informed and understand, where an amendment can be initiated by the petition of a small fraction of the people, keep the cities of the State constantly agitated with

amendments that may be proposed year after year or every six months if they can get together a sufficient number of people to sign the petitions. Now, in spite of what students of government may think and feel in regard to the vast and intense and daily interest that people may have in their form of government, I think that the great mass of citizens do not want to be bothered with elections upon any subject, certainly in the State of New York, more than once a year. They have got something else to do besides deciding upon governmental questions. The idea that they could be summoned to go to the polls on the initiative of a fraction of the people, I think found no favor with any member of the Committee, and I doubt if it would find any favor with this Convention. Therefore, if you did not have that opportunity, some other opportunity should be given for the purpose of enabling the city to express its wish whether it desired to have a general wholesale revision of its charter and it is provided that that question shall be submitted once in eight years. I think in the great mass of cases, these charter revisions that you hear of that have been made in the City of New York, for instance, and they have had half a dozen such in the last fifteen or twenty years — they have not been made as the result of any great call on the part of the citizens of the City of New York for a complete revision of the charter, but they have been the result, I think, very largely, if not entirely, of the study of gentlemen who have devoted themselves to the science of government, and who think that they see how the method of government of the City of New York and of other cities could be greatly improved by some change in the form of the charter. Possibly it could be; I do not say that it could not be, but I do say that, so far as my personal experience is concerned, I do not know of there having existed this great call in the city of New York for a frequent revision of its charter.

Now, this scheme of permitting the Legislature to pass upon charters by non-action or by nullification has been termed a Filipino scheme. I suppose you might just as well call it the San Francisco scheme, but, whatever name you call it by, I take it that has nothing to do with the merits of the proposal. Whether it was a proposal that came from the babe, so to speak, of the Philippine Islands, or whether it came from the sand-lots of San Francisco, I do not think presents any argument to the members of this Convention as to whether the scheme is a good one or not. The scheme is there; it is definite and clear, and the object of it is, as I have stated, to maintain that complete sovereignty of the State over the general form of government of the cities. Now, this theory of control of the Legislature over the general form of

city charters is a control that is somewhat similarly exercised and expressed in the United States Constitution, where it guarantees to every state a republican form of government. Even there the general government has kept its hands upon the control of the situation to that extent. While I concede that the control of the State would be to a greater extent over city charters than is contained there, it is only an expression of the same idea, that there must be in the controlling body some opportunity of passing upon the questions where there is to be some reform of the charter, outside of some of the powers that are given, and whether it conforms with the general policy of the State or not. Now, there have been some criticisms of the language that has been used in the bill, and I am not going to discuss those at any length. Mr. Marshall has criticized the use of the word "business," and I certainly, as I think every member of this Convention who has been brought in contact with Mr. Marshall in the discussions, either in the Convention or not, feel that his views are entitled to great consideration. But I do think that he has allowed his imagination, if I may use the term, to run away with him a little in the picture of the great disasters that might result from leaving that word in. It may not be very important, but it does seem to me that it has this importance, that it is a word that is used, as I understand, in nearly every charter granted in the State where the grant has come from the Legislature. If there were any danger in connection with the word, in view of the fact that it has been so generally used, that danger might arise from the fact of its omission. The argument might be made that there was a disposition on the part of the Convention to take away from the cities that control over their affairs which is expressed in the usual terms of the legislative grant—their "business." I am advised, however, by counsel possessing some of the eminence of Mr. Marshall—I will not say equal eminence—that the word has not any great significance, but it does seem to me that it is not fraught with the dangers which Mr. Marshall has suggested, and is possibly fraught with the danger which I have suggested. Now, in regard to the amendment of Mr. Sanders, he proposes to make the power of making an amendment perfectly definite and clear, that it should originate from the city. I think that is his meaning.

I confess that the amendment which has been suggested by Mr. Nicoll, and amended by Mr. Wickersham—that the words "local government" should go in—possibly also would be an improvement, but I think these various amendments of phraseology are not of equal importance with having the Convention

pass, if possible, upon the general scheme, whether that is acceptable to it or not, and then later we can take up the question of the amendments of the phraseology.

Mr. Barrett — I desire to offer this amendment to Section four.

The Secretary — Page 4, line 17, after the word "distinction," insert "and to special laws relating to a county or counties not wholly included in a city, in so far as such special laws supplement and extend general county laws relating to the duties of county officers and also wherein cities are treated as towns for county purposes."

Mr. Barrett — In the fifty-seven counties outside the city of New York there are some fifty-odd cities. In those counties, in addition to the general county laws mentioned in section four of this proposed amendment, nearly every county supplements—or the county procedure is supplemented by special laws which they have found necessary to carry on their county government. In those counties in which the fifty-two or three cities are located for many purposes in which the county acts as an agent of the State and then exercises those duties by calling upon the towns within those counties, cities are treated as towns for county purposes. Now, in many of the larger counties, they exist very largely by special legislation, and it has occurred to me, without going fully into it at this time, if the exception covers only general laws, very many of the counties will be embarrassed in their county procedure, possibly coming in conflict with the provision of the so-called home rule clause relating to cities. From a brief examination on my part some little time ago, since this Convention was in session, I observe that since the provision in regard to county laws providing a reasonably complete procedure for counties was established in 1892, there have been over twelve hundred special acts passed relating to county government in this State, and, with the exception of some of the very smallest counties, most of the counties operate their county administration and the matters in which counties act as agents for the State, not only in connection with the general laws, but largely in regard to these special laws by which the general laws have been supplemented. It seems to me unless there is some such saving provision as this, there might be, or there would be opportunity for some serious complication. Take, very briefly, for illustration, the question of the care of the poor. That is supervised to some degree as a State proposition, but is carried on as a county function and also as a town function, and cities also take care of their poor and report to the county, and for this purpose are treated as towns. Now, some of these counties or a considerable number of them

have special laws relating to the care of the poor. Now, if some city should choose to determine that they treated the care of the poor as a local function of their local business, there might be some serious embarrassment between them and the county, should the county itself, as I hope sometime it will be possible for a county to do, carry on the care of the poor as a county proposition. As I say, I do not desire to go fully into this question, because there can be very little said on it. I simply state that in the fifty-odd cities in the fifty-seven counties outside the city of New York, if this exception only applies to general laws, it might cause some serious complications inside of the next twenty years.

Mr. Wickersham — Mr. Chairman, I should like to ask the Chairman of the Committee on Cities whether that particular subject received consideration from the Committee.

Mr. Low — Mr. Chairman, it has not, and I look upon the amendment as entirely germane and very important.

Mr. Barrett — I only want to say that I propounded a question to the Chairman of the Cities Committee covering some of these features, and I believe he was not exactly ready to answer that, and that is the reason I put in the amendment so that my idea might be preserved until it can be discussed later.

Mr. Wickersham — I do not wish to add very much to this debate, but one or two considerations have occurred to me during the discussion this morning that I think it might be well to advert to for a moment. I think we have all been very much helped by the simple, lucid explanation which Delegate Weed has just given us of the various principles embodied in this measure, and the considerations which have actuated the Committee in framing it. I must confess to have listened with great surprise to the remarks of Delegate E. N. Smith, the delegate from Watertown, regarding home rule. Mr. Chairman, I think there is one subject regarding which the people of this State have given us a mandate, that is the subject of home rule for cities. Both of the great political parties have spoken on this subject in no uncertain terms, and perhaps it would be profitable to turn for a moment to the passages in the platforms of both political parties at their last conventions, to see what it was that those in convention assembled suggested this Convention should do on the subject of home rule. The Democratic party, in convention assembled in Saratoga, adopted this plank: "Home rule to its fullest extent should be conferred upon our cities, free from interference by the Legislature, and greater powers of local legislation granted to boards of supervisors; and, the Legislature being thus relieved of the great burden of local legislation, there should be biennial sessions thereof."

The Republican party, in convention assembled, in Saratoga, the same month, adopted this provision: "Home rule. Every citizen of the United States is entitled to look to his State and to the National Government for the protection of fundamental rights. As to the personal and property rights of individuals, the city or county is and should remain the agent of the State and subject to its legislative control. The State must also reserve for the central authority the determination of general policies equally applicable to every part of the State. Consistently with these limitations, cities and counties should manage their own affairs without interference by the State, and should enjoy home rule to the widest practicable extent. We, however, believe in continuing the Constitutional limitations upon debts of cities and control over the exercise of the power of taxation." Now, Mr. Chairman, certainly neither of the parties in framing those provisions, setting forth the principles which, in the opinions of the delegates there assembled, should govern this Convention in approaching the subject of home rule, proposed that we should authorize the Legislature to delegate a power to the cities which it should reserve the right to retake at the same moment or at the next moment. Certainly both of those parties recognized that there was an insistent demand upon the part of the people of this State that there be conferred upon the cities a real power, exclusive of legislative interference. I take it, sir, that the problem to which this Committee addressed itself in framing the measure which we now have before us, was to carry out in good faith the provisions embodied in those two platforms, and which have been voiced in almost every assembly in this State for some years past. It was a real home rule that they sought to confer, and not a sham home rule. Mr. Chairman, the first thing, therefore, that we turn to, in looking at this article, is to see what the grant of power is which is proposed to be given to the cities of this State. Now, sir, the Committee found itself confronted with the difficulty which is inherent in the problem. It is a difficulty which other States have found; it is a difficulty which has given rise to an abundance of legal disputation and decision; it is a difficulty not easy of solution. With some modifications in language proposed, I think this report affords an excellent basis for a solution of the problem. Gentlemen may dispute about words. Here and there a phrase may be altered, an idea find expression in some more acceptable language, but, taking it all in all, it does not seem to me that there is any insuperable difficulty in making this measure something that will meet the approval of this body, if we approach it with the desire and intention of conferring home rule upon cities and not of giving a purely illusory and ineffective

grant of power. Now, Mr. Chairman, what is it that is granted to a municipality? What is a municipal corporation? The great authority on the subject, of course, is the monumental work of Judge Dillon. I do not mean to burden this Committee or the records of this assemblage with extended references to that great work, but there are certain outlines to which I wish to call attention, because they are very clearly stated in this work in language which is easily understandable, and which I think may throw some light upon the problem which is before us.

Now, Judge Dillon, speaking of the fact that up to a comparatively recent date municipalities were created by special charter, as a rule, and in recent times have come to be created under general laws, says: "It will be useful to notice the outline features of one of these charters, since it constitutes the organic act of the corporation, and bestows upon it its legal character. Such a charter usually sets out with an incorporating clause declaring, 'that the inhabitants of the town of (naming it), or city of (naming it), are hereby constituted a body politic and corporate, by the name of the "town of _____," or "city of _____," and by that name shall have perpetual succession, may use a common seal, sue and be sued, purchase, hold and sell property,' etc. The charter then defines the territorial boundaries of the town or city thus incorporated. After that follow provisions relating to the governing body of the corporation, usually styled the town or city council." Why, Mr. Chairman, must such a corporation have a governing body? Because that body is entrusted with the local government with which this municipality is endowed. One of the first grants of power we should look to in such a measure as this is the power of self-government limited by the restrictions applicable to the municipality. Then the charter fixes the qualifications of electors, voters, the mode of holding elections, which provision is made for the election of the mayor, and then enumerates the powers of the city council and of the other officials, etc., etc. "When it is remembered," Judge Dillon says, "that the charter of such a corporation is its Constitution and gives to it all the powers it possesses (unless other statutes are applicable to it), its careful study, in any given case, is indispensable to an understanding of the nature and extent of the powers it confers, the duties it enjoins, and liabilities it creates. The construction of its various provisions, and the determinations of the relation which these bear to the general statutes of the State—how far the charter controls or how far it is controlled by other legislation,—are often among the most difficult problems which

perplex the lawyer and the judge." Therefore, if those difficult problems perplex the lawyer and the judge, how much more will they perplex the legislator in a Constitutional Convention who is seeking to prescribe the limits of those powers in their relation to the general statutes and the Constitution of the State? Now, passing on, Judge Dillon calls attention to the fact that in recent times general laws have been passed, and there has grown up what is called the method of constitutional provisions authorizing cities to frame their charters known generally as free-holders' charters, and he points out the great difficulties which have arisen in regard to the construction of those freeholders' charters, growing out of two things, not only the difficulty of the application of the general statutes of the State, but the trouble that has grown up regarding the provision of the Constitution of the United States which requires the United States to guarantee to every State a republican form of government, and the decisions which hold that an attempt to segregate the sovereign power of the State and confer it absolutely upon the municipality, making of that municipality an independent sovereignty, would be in direct violation of the limitations in the Constitution of the United States requiring the Federal Government to guarantee to the State a republican form of government. And, for that reason, within the limits of the Constitution of the United States and independently of any language that may be employed here, of course, this Committee was charged with the duty of seeing to it that the grant of power was not in derogation of that sovereign right which inheres in the State and without which the Government of the United States would be in obligation to come here and see to it that a republican form of government was established in this Commonwealth. Now, this difficulty has arisen in other States. Turning to Judge Dillon's discussion of this subject, I find a good deal with regard to the questions that have arisen in the State of Missouri, where they have had freeholders' charters, and where a great deal of litigation has arisen respecting the effect of those freeholders' charters upon the residuum charters of the State, and the language which Judge Dillon uses is quite suggestive. He says: "The later decisions of the Supreme Court of Missouri referred to *infra*, upon the subject of the relation between a freeholders' charter and the general legislative power of the State, having wisely limited the *exclusive* power of the city to matters purely, clearly, and indisputably local and municipal, leaving the city in all other matters under the general legislative power of the State. *State v. Missouri & K. Tel. Co.*, 189 Mo. 83. But what is a 'local' or 'internal' or 'municipal' affair as distinguished from a 'general' or 'State' affair has proved to be a

source of much controversy, and the decisions of the courts in the several States have left the subject in such a condition of chaos and uncertainty that the question can, in many instances, only be settled by the highest tribunal of the State in each individual case as it arises."

Mr. Chairman, I take it that our duty here is to see that this question is not left in such a state of chaos and uncertainty that future generations through future courts will be left in doubt as to the meaning we sought to express.

Mr. Chairman, the hour of one o'clock having arrived, I move that the Committee take a recess until two-thirty.

The Chairman — It is moved and seconded that the Committee take a recess until two-thirty. All in favor of that motion will say Aye. Opposed, No. The motion is carried. The Committee will take a recess until two-thirty. Whereupon, at 1 P. M. the Committee took a recess until 2:30 P. M. of the same day.

AFTER RECESS—2:30 P. M.

The Chairman — The Committee will come to order and resume consideration of section 4, General Order No. 50. Mr. Wickersham has the floor.

Mr. Wickersham — I shall not detain the Convention very long with the remarks I was in the midst of making when we adjourned. I pointed out, before adjournment, some of the difficulties that necessarily beset the Committee on Cities when it undertook the preparation of this subject which we have before us, and I had pointed out some of the essentials, from my own point of view, to dealing with this subject in order to meet the just expectation of the people of the State and in order to conform with the general ideas formulated by the two great parties in obedience to the popular demand. Now, when Mr. Low opened the debate on that subject, he very properly and very logically proceeded at once to the heart of the matter by moving that the Committee take up for consideration not section 1, but section 4, at the outset; and that was because in that section is contained the grant of power which is the crux of the whole matter, and it opens with the provision that every city shall have exclusive power to manage, regulate and control its own property, business and local affairs, subject to the constitution and to certain general laws. Standing alone that provision, with possibly a verbal modification here and there, would have met, I think, in general the views of almost all of those who are in favor of real and not an illusory grant of power to the cities to administer their own affairs. The section went further,

however. It undertook to enumerate some of the things, some of the powers which were included in the general grant. Mr. Chairman, it is always a dangerous thing to attempt to enumerate some of the things which are intended to be granted, without making the enumeration exhaustive. It tends to throw some doubt upon the general language, and of course it fails to satisfy those in whose minds there has been enumerated some power not expressed. One of the powers, however, so granted, which has given rise to the discussion which has been proceeding in this body for the last three days, was the power of amendment and the power of enacting local or special laws relating to the property, business, or local affairs of the city. Because, when you turn to a definition of what is meant by local or special laws we run into the first apparent ambiguity which gave rise to the proposed amendment. Then turning further, we come upon a limitation upon the power conferred upon the legislative body, or rather the power conferred upon the city to be exercised by the legislative body, which was that an amendment which related to one of the matters specified under this subdivision *a*, which is a general grant with an enumeration of some of the things, included, and which did not change the framework of the city government, etc., might be enacted by the board of aldermen with the consent of the board of estimate and apportionment, if there were one, and with the approval of the mayor and then become final.

The first trenchant criticism about which the storm has raged during the last two or three days was as to the definition of the word "framework" of the city government. Now, Mr. Chairman, it may be that after we have got through with this discussion we will come back to the use of that word "framework" but it is rather significant and somewhat discouraging to find so much difference of opinion among the members of the Committee as to the meaning of that term. "Framework," I take it, was employed by those who agreed upon it as the general structure of government. It has been challenged and attacked upon the ground that it might reach very much beyond that, but I take it that the discussion here is making clear that most of the members of the Committee, although not all, intended by that to say that if in the exercise of this legislative power conferred upon the city it attempted to change the general structure, general structural character of its government, it must go farther to have the legislation enacted effective. One or two members of the committee have sought to define that by the amendments which we have proposed. I suggested as one amendment to strike out the word "framework" and in lieu of it to insert the words "the members, power or method of selection or removal of the elected officers of the city."

At once the city of Brooklyn, through its representatives here, objected on the ground that that would expose them to the horrible fate of having the borough system of Brooklyn ripped up by the common council, by the board of aldermen, the board of estimate and apportionment and the mayor, and their proud borough, with its autonomous system of self-government, reduced to the condition of a satrapy under the domination of some high official appointed by a chief executive selected from the horrid purloins of Manhattan and sent forth to execute the will of Manhattan upon the 2,000,000 free people of Brooklyn, a consummation which every one would recoil from and which I am farthest from having desired to suggest when I sought to make clear the meaning of the words "framework of government." Then it was suggested that in lieu of that we might use the words, "the members, power, method of selection or change in the offices, boards or departments, among which the administrative functions of the city are distributed by its charter." Now those are merely words suggested for the purpose of defining the idea of "frame work." Again, I alluded to them for the purpose of showing that, in my opinion, there is not in that language or in the various alternatives which have been suggested any irreconcilable conflict which might not be resolved by a number of candid minds seeking to accomplish the same result. As I say, we might come back to the use of the word "framework" although it has not a technical meaning.

Mr. Marshall — In considering the language which you have used in your various amendments, it has occurred to me that perhaps there might be a meeting-point of the various interests which have been discussed in this question and which, after all, relate solely to the question of government rather than to any of the other questions which we have discussed, whether there cannot be a differentiation between State functions, on the one side, which should be initiated by the Legislature, and the local or municipal functions of government which may be left to the locality. To make myself clear, there are certain great State functions, such as those of the police, health, justice, education, taxation, eminent domain, public utilities and their regulations, and election, which are State functions of government. As to them, the State should be supreme. But there are a multitude of other functions which are of local character, which are municipal functions of government, which might as well be left to the locality, and, absolute home rule might be accorded to the several localities with regard to the latter subjects, but not as to the former. The former constitute part of the sovereignty of the State and cannot and should not be surrendered to any locality. In that connection I call your attention to a definition of what are called municipal functions of

government as considered by the Appellate Division in *McGrath v. Grout*, 69 App. Div. I would like to direct your attention and that of the members of the Committee along those lines in the hope that it might afford a solution of this really controverted question.

Mr. Wickersham — Mr. Chairman, I would like to ask Mr. Marshall if he would be so kind as to read that definition given by the Appellate Division in the case to which he refers?

Mr. Marshall — This is an opinion by Justice Woodward in the case to which I have just referred and in which he deals with different subjects which might be treated as matters of local concern, including the following: 1, streets and highways; 2, municipal and public places; 3, sewers and waterworks; 4, character and structure of buildings as to safety and security; 5, salaries of city officers and employees; 6, ward boundaries; 7, vacating, reducing or postponing any tax or assessments; 8, membership and constituent parts of the common council; 9, powers and duties of the common council or any city officer as to the subjects hereinbefore enumerated. It is clear that those all more specifically relate to matters of local government and local concern with which the State at large has no specific duties to perform, nor has it any general concern in them; whereas, this other class of cases constitutes State functions and are matters as to which it would be, in my judgment impolitic to say the least, to ask for an exception on the part of the State if it must hold and continue its State sovereignty, otherwise, it would be creating an *imperium in imperio*. But even as to those subjects I am entirely in favor of permitting them to be dealt with under the powers of the suspensive veto; that as to them, the Legislature might initiate legislation and refer it to the local authorities for approval or disapproval. The local authorities might disapprove and then the power should be retained by the Legislature to adhere, nevertheless, to its own views — whether by a majority vote or a larger vote is a matter which might be later considered, but it has occurred to me that perhaps the solution of our difficulty might be found in the direction of such a suggestion.

Mr. Low — I would like to ask Mr. Marshall if he does not think those things which he has enumerated could be best dealt with by general law under all ordinary circumstances?

Mr. Marshall — I hope Mr. Low understands that I am the last man in the world to ask for enumeration in the Constitution of anything of this character. I am merely using this by way of illustration as to what I conceive to be matters of local government as distinguished from the exercise of State functions. I have particularized in response to the question as to what I considered State functions, and I have also from this authority called attention to what was recognized to constitute municipal functions; but

I must repeat again that I do not wish to be misunderstood on that subject. It is contrary to my thought in respect to Constitution drafting to dissent to particulars in the Constitution.

Mr. Wickersham — Mr. Chairman, I think the suggestions which are made in the decision referred to are helpful. They are illuminating as to some of the things which are municipal purposes as distinguished from purposes of a broader, State-wide character. I quite agree with Mr. Marshall on the undesirability of too particular an enumeration. Of course when we are seeking to carve out of the sovereignty of the State a grant of power which is to be free from further legislative interference, it is quite essential that the terms of the grant be made as clear and distinct as possible. It is not desirable that they be so minutely enumerated as to impair the proper, necessary effect of the grant, but it is important that they be so clear that no reasonable misinterpretation can arise. Now, going a step further, of course, the power of the State, the sovereign power of the State is, in the first instance, all-comprehensive. We may carve out of that and delegate to the municipality free from further legislative interference a certain grant of power. There will then remain a residuum which is divisible into two parts, as the Committee has recognized in this bill, and as Mr. Low has so clearly expressed. There is, first, so much of the reserve power — of the remaining power — I won't use that word "reserve" — of the remaining power of the State as applies to the State at large as a part of that sovereignty which constitutes a State. We cannot enumerate it. It were idle to attempt; it were futile to seek to enumerate what is comprised in the general sovereignty of the State which remains when it has granted such powers of local self-government as are under discussion here to a municipality. Then there is also left in the State a power which may be exercisable with relation to a city. It is not a part of its charter, but it is something which can be only effectively and properly exercisable by a local or special law applicable to one city or one or more classes of cities. It would be absurd to have that power exercisable only by law which should apply alike to the city of New York and the city of Watertown, and provision must be made for the exercise of that power. Now, the method selected for the exercise of that power, if I understand this report and this proposal aright, is that it shall be initiated by the city itself, that it shall be sent to the Legislature for its approval or disapproval. Why? Well, naturally, it seems to me, because the city will be primarily interested in it. The Legislature withdrawn from general contact with the city will not recognize the need which the city may feel keenly, and therefore power is given to the city to initiate and come up to Albany and say,

"There is a measure which we have enacted, and if the State has no objections we would like that to become law."

Now, Mr. Chairman, without going further now, it does seem to me that if the majority of those who have heard this discussion are in harmony with these general principles, there ought to be no difficulty in finally adjusting language to express them. The difficulty, as I see it, is not in the language. The difficulty is in the underlying points of view of those who do not actually want an actual grant of bona fide home rule to cities and those who do, the difference in point of view of those who want the Legislature to reserve always the plenary power to interfere with and control the affairs of cities, and those who want to withdraw from the possibility of that legislative control some of the powers properly inherent in the municipal corporations and properly exercisable by them. No words can bring those two conflicting ideas into harmony. Any word that seeks to do so will be but a snare and a delusion. We must recognize at the outset the irreconcilable difference in ideas, seek a word that expresses the idea we adopt and not one which attempts the impossible by amalgamating ideas that cannot in themselves be amalgamated.

Mr. Hinman — I do not take myself too seriously in this body, but for the last six years I have been giving some consideration to this subject each year and after giving it considerable attention I have found that after sleeping upon it I have awakened the next morning to find that my judgment was not as accurate as I had supposed when I had completed my analysis of it; and what I fear in this body is that after we have said and done all and have given the fullest consideration to the subject to the division of power between states and municipalities, when we come as members of this Convention to agree upon our thoughts we may rise in the morning after it has all been settled and find that we have made some very grave blunders. And it is for that reason that I believe we should take one step at a time, and that a distinct step in advance, rather than to try to provide a cure-all through this Convention. This is not the only subject we have to consider. It is one of many important ones. I do not wish to discredit this very excellent committee which has given such strict attention to this subject, but I have the same fear with reference to the judgment of these members that I have of my own when I recollect my own past on this subject. The subject is so broad and has so many ramifications, the powers of city and state dovetail into each other so inextricably, that I think we cannot define a law which will detail the definition of those powers. What should we think of granting to a railroad corporation, for example, a charter or permit it to draft its own charter and come to the Legislature

and say that, having been drafted, it should not be amendable by the state which had created that charter, which had created that corporation, but that the charter should be irrevocable except through the consent of that corporation? We should say it was ridiculous. Then how are we going to view the proposition of writing into the fundamental law a provision as to the granting of such a power to cities? We will say to the city of New York, which at present, has, if not quite, very nearly a majority of the voters of the State, that, having granted this power to you, we shall never be able to take it away. As that city grows in its population and becomes a larger proportion of the State from a population standpoint, as it is likely to do, the situation will grow worse. We shall have permitted the State then by our action to do something which is irrevocable.

Now I am not one of those who would harp upon the thought that New York city should be considered as separate and apart from the State, but I believe that the city of New York itself is not to be benefited by having been placed in that position and that it in time, if granted such power, would regret it. Nevertheless we ought not to permit ourselves to place the State of New York in a position where it can never do for one of its municipalities that which it feels it ought to do, because it requires the consent of that municipality before it can do it. Now what are the benefits that we seek by such a home rule provision? We say that in the first place the State has business of its own to do and ought not to be so taxed with this local business. We say that the members of the legislature should be emancipated from these local matters and confine their efforts to things which are of State importance and that they would have sufficient to do; and that as far as the cities are concerned, we should have the details of their charter passed upon by a body having greater knowledge of facts and conditions and more interested in it and to give to the city full responsibility in order that it may grow with the opportunity for the exercise of that responsibility. A very excellent thought, but why should we sacrifice the sovereignty of the State? The State cannot be said to have so much business as to require it to make these sacrifices. The Legislature is not going to be so benefited that we should make this complete sacrifice by constitutional rule, and if the city is to be considered alone I can very readily believe that the city itself will wish to make an appeal to the State when it finds that the city council is tinkering more with the charter than the Legislature ever thought of tinkering. Now I want to dwell for a moment on my experience here in this Legislature in this matter of charter tinkering. I don't believe, and I think it will be the judgment of every member who has served in the Legislature — I do not believe that members of the Legislature desire

to tinker with these charters. I believe if they could have gotten away from it in the past they would have gotten away from it, and I believe the history of the last few years in particular of the State has been that the Legislature has made an earnest and honest and a thoroughgoing effort to emancipate itself from matters of local legislation which was not helpful to itself, which was not helpful to the State, and in so doing they drafted a statute known as chapter 247 of the Laws of 1913. But what have they been able to accomplish? If you will read that chapter 247 of the Laws of 1913, you will see that they granted most liberal powers. Here is the first section on the general grant of powers: "Every city is granted power to regulate, manage and control its property and local affairs and is granted all the rights, privileges and jurisdiction necessary and proper for carrying such power into execution. No enumeration of powers in this or any other law shall operate to restrict the meaning of this general grant of power, or to exclude other powers comprehended within this general grant." Then they went on to grant specific powers subject to the Constitution and general laws of the State: "To contract and be contracted with and to institute, maintain and defend any action or proceeding in any court." And then proceeding on through a detailed statement they have covered all of the things, I fancy, from what I recollect of the speeches made on this subject, all of the things sought to be granted by this constitutional rule.

Mr. Wickersham — Do you think it was within the power of the Legislature to delegate those powers?

Mr. Hinman — Mr. Chairman, that is the point I am about to reach.

Mr. J. L. O'Brian — Don't you think that the twenty-three grants of power to which you have referred are, all of them, grants affecting the property and affairs of cities? That is, local powers?

Mr. Hinman — Mr. Chairman, they are not; and that is another important consideration. It would be unsafe for us to say by constitutional rule that the State should grant to the city not only power to exercise its corporate functions but its governmental functions as an agency of the State. But when you grant to the Legislature power over home rule and give it unfettered power, the Legislature is in a position to try it out and then take it back if it thinks it is unwise. But once it is in the fundamental law you can only take it back with the consent of the municipality, and particularly with the consent of the great city of New York and of the city of Buffalo, which seemed to want this, and these two cities together absolutely control this proposition from now on, and I think that is worthy of consideration. Now, as to the question to which Mr. Wickersham addressed himself I fully agree that

the Legislature had no power to delegate. Some of the things that it sought to delegate are first of all — it had no power to delegate its power granted to it as a Legislature, as a Senate and Assembly to be the power of the State. It had not any power to grant to a city the right to amend any special or existing law or to amend its own charter that had been granted to it and therefore it could not commit itself to the situation and Mr. Carmody well brought out that fact in an opinion which he rendered to the mayors of the cities in 1913 by an opinion which he rendered on June 5, 1913. I will not try to read the entire opinion, but here are one or two significant passages which I call attention to the real situation: "Heretofore the rule of construction in respect to powers granted cities by the Legislature was that all powers not granted are withheld. These provisions are intended to reverse that rule" — that was the general grant of power that I read to you — "and to provide that all powers not withheld are granted. This, perhaps, is the most important feature of the Home Rule Law, and if it stands the test of constitutional and legal construction, it will undoubtedly be the source of greatly enlarged powers in cities, for, if cities are given power to regulate, manage and control their property and local affairs, and are given all the rights, privileges and jurisdiction necessary for carrying such powers into execution, then the Legislature has practically placed unlimited home rule in the power of cities, so far as concerns purely municipal affairs.

"This grant of power, however, must be construed in view of the limitations placed upon the Legislature by the Constitution of the State. These restrictions are two: First, the legislative power is placed in the Legislature by the Constitution, and cannot be delegated. Second, the Constitution contains certain specific limitations upon the powers of the Legislature itself, in respect to grants of powers to cities. Under the Constitution the legislative power of the State is vested in the Senate and Assembly. The Constitution further provides that it shall be the duty of the Legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations. While, therefore, the Constitution expressly authorizes the Legislature to delegate certain powers to cities and incorporated villages in respect to their own affairs, that delegation of power is limited in respect to certain specific matters, namely: The power of taxation, assessment, borrowing money, contracting debts and loaning credit." Then he concludes, in a paragraph which is illuminating, very near the end, when he says: "The home rule bill, however, is a long step in the direction of genuine home rule. It has apparently conferred

upon cities all the power that the Legislature possessed in respect to the general management and control of municipal affairs. This power, however, is not complete until the constitutional limitations are removed from the Legislature, so that it may grant cities certain powers of legislation, namely, to make charter amendments, to regulate the method of selection and to fix the compensation and duties of city officials, to organize and regulate the powers of purely municipal bodies and to do whatever act may be properly classified as a municipal act, which is not an invasion of the rights of citizenship or of property which the State itself in its sovereign capacity must regulate. Now the difficulty which arose from the passage of this bill was that immediately upon that construction of the statute by the Attorney-General, and he is unquestionably sound in his criticisms, there was not a corporation counsel in the State of New York who was willing to sit down and say how far has the Legislature been able to delegate its powers. Certainly they all recognized the fact that the Legislature had no power to amend its charter, no power to amend any special or local law which may have been passed with reference to that city during a long period of years. Now, take the city of Albany for example. We have here what is known as a charter of the cities of the second-class, and it is only an upper stratum which has been laid over the entire charter of the city of Albany. So far as I recollect, the last general revision was in 1884, and from that time on down to this day we have been making amendments to that charter of 1884; we have been passing special laws which did not specifically amend that charter, and we have a mass, then, of statutes which relate specifically to the city of Albany, either as amendments to the charter of 1884, or standing separate and apart from it, and then on top of all we have our charter of the cities of the second class.

Now, the city of Albany has no authority under this general home rule bill of 1913, to take up the charter of 1884 and amend it, or to pass any ordinance that would in any way affect an existing statute of the State, because the Legislature has no power to delegate that legislative authority. The Legislature had no power to supersede all of these special charter provisions by general provisions of this kind in incorporating it within the chapter that was sought to be passed and not specifically repeating it. In other words, the cities were unable, after the passage of this very thorough-going home rule bill to accommodate themselves to it, and with the result that even after the passage of this bill we were flooded with a lot of local legislation, because every corporation counsel was afraid to take a chance, and we had bill after bill come in from every city in the State asking us for special

charter amendments, notwithstanding the fact that the bill, or law requested seemed to be entirely within the provisions of this law. Now, there seems to be a great misapprehension in my judgment amongst the members of this Convention as to the disposition of the Legislature to tinker with these various laws. There is scarcely a bill which comes here — it is the exception and not the rule; there is scarcely a bill comes here that does not come at the request of the city, or of the corporation counsel, and sought by him for the reason that he is unable to operate or properly advise the municipality without the passage of such a law; and if you are going to do away with legislative tinkering, I desire to leave the idea with you to be thought over pretty carefully, are you not going to provide for much more tinkering at home than you have had in the Legislature? Now, there was another law that the Legislature sought to pass in 1914, and which was equally ineffective, and it was known as the optional city charter law. It was to permit any city to make its form of government by complying with the provisions of this statute, and I have the distinction of having been one of only one or two in the Legislature who voted against it, and I desire to state why I voted against it. I voted against it because it meant that they were not going to be able to accomplish what they thought they were going to be able to accomplish and experience has borne me out. By that provision in Section 8, except in so far as any of this provision "shall be inconsistent with this act the charter of the city and all special and general laws applicable thereto, shall continue in full force and effect, until and unless superseded by the passing of ordinances regulating matters therein provided for, but to the extent that any provisions thereof shall be inconsistent with this act, the same are hereby superseded," the Legislature had no power to delegate to any city in the State the power to amend by ordinance any existing statute, or if it had the power to amend any existing law, it had the power to repeal that law. But the Legislature as the law-making body of the State had no right, under the Constitution, to delegate that authority.

Mr. Franchot — I would like to ask, as one vitally interested in that question, coming from a city which has elected to adopt plan *c* under that optional city charter bill, whether you have any direct authority by way of judicial decision in support of your contention that the provisions of the optional city charter law are unconstitutional?

Mr. Hinman — Mr. Chairman, I have prepared a brief on that subject which I would be glad to submit to the gentleman, and which I have not had opportunity to read lately. I think I can find it in my files. While it was perfectly possible to delegate to

the city the right to decide whether they wanted one of these optional forms of government, so far as that is concerned, I say that they had no power, after they had permitted them to adopt one of these forms of government, to say that they could under that form of government by the passage of an ordinance amend the existing law of the State and all that the Legislature of the State did was to provide an upper crust upon the entire body of the statutes affecting that city, with the result that hereafter those, like the gentleman's city that have preceded under this chapter will have to come to the Legislature and ask to have the other provisions of their charter repealed or modified to constitute proper authority under either form of government. I do not mean to say that they are helpless, but that these provisions that sought to permit them by the passage of an ordinance to accommodate themselves to the new situation was perfectly impossible. Some complaint has been heard here to-day with reference to the number of laws which we find upon the statute books every year, a great body of which are local laws; but I wish someone would tell me whether we are going to be free from that great body of statutes if we are going to delegate to fifty-four cities of the State the power to make statutes, the full power to pass their own statutes; and if they are going to be filed in the Secretary of State's office and made a part of the general statutes of the State, so any lawyer and any citizen of this State may be aware of any law in any community of the State, are we not going to have, perhaps, not fifty-four times as much statute law as we have to-day, but certainly a very substantial increase. There is nothing to be gained by forming in this State fifty-five legislative bodies instead of one, so far as reducing the number of statutes is concerned. Now, what is needed to be remedied? We must very carefully diagnose the situation first. The trouble has been that since the passage of the Home Rule Law, there is not a corporation counsel in the State that thought that the city had anything in the way of authority to proceed, because of such doubt as to the power of the Legislature to delegate that authority.

Mr. Franchot — Can you enlighten us as to whether that doubt was expressed or entertained by the members of the Legislature in relation to the acts they adopted.

Mr. Hinman — Mr. Chairman, that doubt was expressed to them by some of us, but it was not heeded, because the Legislature sought to try it out. They have tried it out, and for about two years we have been operating under it, and since then we have not noticed that the cities had made any less application for amendments to charters than they did before and largely due to the fact that the construction placed upon it by the attorney-general, and a sound

construction, has led them to be fearful of it. Now what we need to-day is to strike the shackles from the Legislature. If you unfetter this Legislature and emancipate it from these rules of restrictions which have been placed upon it by the present Constitution, you are going to make effective all their statutes, and you are going to perform and do a very much better job if you only take one step at a time and permit the Legislature to work it out themselves as they see the light, year after year, rather than now to try to have prescience enough to say in advance of all the difficulties with which we are going to be confronted in the future. And particularly when we find such a disagreement among the very eminent members of this Convention who have been giving this a great deal of consideration as to what should be the delegated power. That seems to me to show more than anything else the necessity of not fixing any constitutional rule; that there should be a legislative rule. You say that tinkering then will cease. But who is going to prophesy that tinkering will cease, if you grant it to fifty-four cities in the State to tinker as they see fit? Now the mayors of the State have been referred to here to-day as desiring this and meeting in convention for several years and asking for home rule; and yet, I find in the paper this morning a statement from Mayor Cox, who wrote, according to the paper, and he is quoted, who wrote to Senator Root, the President of this Convention, as follows: "We submit that the proposition is a denial rather than a grant of home rule, and that under it the cities of the State would be in an infinitely worse predicament than they are at present. Rather than submit the cities to any such constitutional proposition as is proposed, we believe that the people prefer to continue as they have until such time as an enlightened Legislature will permit them to express their opinion on a genuine home rule amendment." Now, do you think you are going to satisfy this Mayors' Conference, do you think you are going to satisfy those who have been asking for home rule in the city of New York, in the city of Buffalo and in some of the parts of the State? No, you are only going half way. We will not dare to go the full way because we ought not to delegate this sovereignty of the State upon the theory that at some time we can take it back. If you ever provide for it by constitutional rule, you will never take it back. And when you come to consider the slender warrant of only 152,000 voters in this State asking for this Convention, I cannot myself see that there is such a tremendous number of "home-rulers" in this State who feel that this must be done and must be done at once. Why, then, take the first step? Why not give the Legislature credit for having meant it when it passed the law of 1913 and when it passed a comprehensive home rule law within its powers at that time? Why

not strike the shackles from the Legislature and permit it to delegate its legislative powers, so that it can delegate to the city of New York, if it desires, even its governmental functions, as it has now, practically, so far as the health department of the city of New York is concerned? The State Health Department has no jurisdiction over the city of New York. Why not permit the Legislature to delegate to the city of New York full home rule, involving both corporate and governmental functions because, if it is not wisely and prudently administered by that city, it can be taken back and taken back in such part as it is necessary for the sovereignty of the State and for the welfare of the city of New York? You say you cannot trust the legislative body. I say to you, are you going to trust the common councils of the State and yet will not trust the Legislature? I ask you to think for one moment of the consistency of the State and the common councils and the boards of aldermen of this State and say then whether the reputation of those bodies has entitled them to this greater and added dignity.

Mr. C. H. Young — I offer the following amendment and ask the clerk to read the same and will then attempt to explain the reason for it.

The Secretary — Section 1, page 2, line 8, strike out "incorporated villages or to all cities of a class" and insert in its place, "cities of a class or to all incorporated villages."

Mr. C. H. Young — This section commences with a reference to cities and then to incorporated villages. It ends by referring to cities and incorporated villages. The purpose of this amendment is that in the middle it refers to incorporated villages and cities instead of to cities and incorporated villages, which is the proper form. That is the only purpose of it.

Mr. M. J. O'Brien — I am not going to take up much of the time of the Convention, but, after listening to the statements made by Mr. Hinman, I am afraid that all of us will get into such a mental state here that we will not appreciate what was attempted by this committee and what they have already accomplished. As I understand his argument, he has proceeded to build it up on the theory that we were not going to give home rule to the cities, and he said, among other things, that we could not delegate the powers that the Legislature has because they are powers in sovereignty. Now isn't it as clear as can be that we have got here two distinct questions? One was presented by Mr. Wickersham, in which he asks,— and I ask Mr. Hinman whether, in the argument he makes, he stands here for giving home rule as asked for by the people in the different cities of the State, or whether he wants to have it in such shape that we will go on under what we have had

in the past by an attempt on the part of the Legislature — to do what? — an attempt by the Legislature to do that which they haven't any right to do. Why, if it were not that we were endeavoring by a constitutional amendment to give the power to the municipalities to manage their own local affairs we would not have this report of this committee. One splendid thing that this committee has done was to approach the subject up to the point of realizing what powers it was necessary to grant in order to remove that restriction which was upon the Legislature. The Legislature, we understand perfectly well, is powerless to give what the cities are demanding, and the whole purpose of this amendment was to remove those restrictions. In the very opinion from which Mr. Hinman read, from the Attorney-General, the whole thing is very clearly set forth, but he goes along and says that the Cullen bill of 1913 was a full measure of home rule, a splendid home rule bill, which no doubt would have been acceptable to every city in the State. But what happened to it? Why, in that bill there was a delegation of powers which belonged to the State, and therefore it fell to the ground. Let me instance it — perhaps that is the best way. Take a single instance in connection with that subject of the delegation of powers. The Attorney-General in this opinion and all the judges who have written on the subject have held, very properly, that when you come to the legislative power of the State, it must be exercised by the Senate and Assembly. Now when you come to give what the cities are demanding, that is the right to make their own charters and therefore amend them, that of course is a delegation of legislative power. Now is it not as clear as anything could be that no city in this State can ever get the right to make a charter or to amend a charter until by constitutional provision we have provided that that power can be delegated to the municipality? So we come back to this question, how do we want to give the cities home rule to do that thing? If the purpose is to amend the laws as they are, with the power represented by the sovereignty of the State in the Legislature, and we are unwilling to allow the cities to control and govern in their own local and municipal affairs, then we have got a clean-cut line which the gentlemen can follow. But I claim that if, on the other hand, we are to follow what has been the work of this committee, an effort to give genuine home rule which shall include the right to make their own charters, then you have got to have a constitutional provision, because that constitutional provision will do away with the restrictions that are now imposed upon all, Legislature and citizens alike, to take up this question of municipal government and handle it after their own needs and in accordance with their best judgment. Now I am not going to prolong the argument. That thing

has been very fully set forth in the opinion of the Attorney-General from which Mr. Hinman read a portion. He said in regard to this Cullen bill: "It is proper, however, to say that before a perfect home rule bill can be passed by the Legislature there must be, or at least there should be, an amendment to the State Constitution so as to remove the apparent limitations upon the Legislature in respect to granting powers to cities. There is no reason why cities should not be given the right to make ordinances in respect to purely municipal affairs, to change their form of government, to change their method of selecting city officials, to combine or divide the powers of municipal bodies, and to regulate the control of municipal power generally." Of course, it is conceded that, without a constitutional provision, the Legislature cannot delegate that power. So I submit, Mr. Chairman, that we are considering this question, as suggested this morning by Mr. Latson, who was running along on the same lines, whose mind was tending in that direction. He said he did not know what was meant by home rule. I am stating to him what I understand the people want who are asking for home rule. It is a right to govern their own local affairs, and they cannot govern their own local affairs. They never can make charters of their own until there is a constitutional provision which will undoubtedly take away some of the powers heretofore exercised by the State through the Legislature, so that they can look after their own affairs. That, as I say, is the question and if we keep there we will avoid at least confusion of thought and those who are for home rule as it is sought here will be on one side and those who are opposed to the State releasing any of its power which it now has vested in the Legislature will be on the other side of the question. That will be the line of demarcation.

Mr. Wiggins — I want to inquire of Judge O'Brien whether the view as expressed by him is that if the restriction were removed from the Constitution which prohibits the Legislature from delegating powers to cities, that would meet the contention which he makes.

Mr. M. J. O'Brien — It would.

Mr. Wiggins — Then the removal of the restriction preventing the Legislature from delegating its powers to cities would satisfy that measure of home rule which you have in mind?

Mr. M. J. O'Brien — Surely. It goes one step farther.

Mr. Marshall — Mr. Chairman, I do not believe that after these several political parties have agreed that there shall be granted to the several cities of the State a measure of home rule, they would be satisfied with a mere declaration that the Legislature may delegate certain powers to the city, leaving it optional with the Legislature to confer upon selected cities the right of home rule, the

selection being not that of the cities themselves, but of the Legislature.

Mr. M. J. O'Brien — I did not get Mr. Wiggins' question. Of course, those who are in favor of home rule want it in the fundamental law; that is the reason this proposal is made and that is the purpose of this report of the committee.

Mr. Marshall — The fact that there are fifty-four cities in the State and that those fifty-four cities might enact laws, some or all of which might in time have to be passed upon by the Legislature under the power of nullification or otherwise, does not affect the question. To-day the Legislature deals with respect to these fifty-four cities sometimes without their request and sometimes at the request of certain interests in those localities without action or concurrence by the people of the localities or by those who are in authority in those localities. This provision or a similar provision, if adopted, would not lead to more legislation than we now have. It would only mean that the initiation and responsibility would rest upon the municipalities themselves and their people rather than upon the Legislature. At all events, there cannot be that shifting of responsibility which now exists. We now find that the Legislature points to the municipal authorities and says: "You are responsible," and the municipal authorities refer to the Legislature and say: "You are responsible," with the consequence that the people are mystified, and really do not know, in fact, who is responsible.

Municipal home rule, if it means anything at all, means local self-government with responsibility upon the locality. It will have made its bed and it will be obliged to lie in it if that bed is uncomfortably made, and the people of the municipality will know how to deal with the situation if they find that they have had imposed upon them by their own authorities or by their own action legislation which is contrary to the welfare of the municipality. Now I am in favor of home rule that means real home rule and not imitation home rule, and I am satisfied that the committee that has proposed this measure is united in a desire to give home rule. What it means, however; how that is to be accomplished, however, is, I regret to say, a matter of doubt in the minds of many of those who have read this article with great care. There have been developed three schools of interpretation in the committee itself with respect to the language which has been employed in this article, especially in section 4, as to what constitutes the powers of the municipality in regard to the subject of legislation. Now if any law is so drafted that it is not only ambiguous but has many meanings, not only that it may mean one of two things but that it may mean one of three or more things.

then it is high time that, while we still have an opportunity to deal with the bill, that doubt should be silenced once and for all. I am confident that the English language still possesses sufficient clearness and elasticity and sufficient vocabulary to make it possible to make clear what those who draft a law, and especially a constitutional provision, intend to accomplish by means of it. Now, Mr. O'Brian, a member of the Committee, says that, according to his interpretation, the power given to a municipality, or to the people of a municipality to frame and to amend charters is limited and confined to such matters as relate to the property, business or local affairs of the municipality. That is my interpretation of the provision. Mr. Low says that it was his understanding that the right of revision and amendment extended not only to the subject of property, business and local affairs but also to the general subject of the government of the municipality. That, I claim, is an inadmissible interpretation. Mr. Sanders, from the committee, says that, so far as the subject of government is concerned, the power of amendment and revision by the Legislature and by the people of the municipality or the municipal authorities is concurrent. I find no language which would permit such an interpretation. Now, let me refer to the language of this measure to indicate why I believe that Mr. O'Brian's interpretation is correct and that of the other gentlemen is incorrect. In section 3 we find the general provision that "laws relating to the government of cities and applying to less than all the cities of the State without classification or distinction and not within the powers granted to cities by this article are defined for the purpose of this section as special city laws." Then provision is made as to how such special city laws shall be passed and to re-enact the suspensive veto provision contained in our present Constitution. It is to be seen there that that deals with laws relating to the government of cities in the broadest and most unlimited terms — absolute power as to government.

Now to come to section 4 which deals with the exclusive powers of cities and that provides that, "every city shall have exclusive power to manage, regulate and control its own property, business and local affairs." You will note that the word "government" is in no manner specified. That is the clause in section 4 which constitutes the grant of power, the exclusive power to the city to deal with the subject of property, business and local affairs as contradistinguished from government of cities which is dealt with in the previous section. Now it continues: "Such power shall be deemed to include among others" (a). Then in subdivision "a" are mentioned certain powers which necessarily deal not with the subject of government but with property, business and

local affairs. At all events, even if in some aspect of them they may differ with matters of local government, they certainly are not intended, so far as I can see from this section, to confer any original power of government upon any city. It may perhaps be that through an erroneous specification matters which have something to do with government may be intermingled with matters which are there referred to and which deal with local affairs. Now, turning to subdivision "b," which treats of the subject of the amendment of charters or of any local or special laws relating to cities, which is, "The power, as hereinafter provided, to amend its charter or any local or special law"—as to what? Not with respect to government, but as to property, business or local affairs. Having thus introduced the subject, there is a carefully worked-out method of exercising—what? Full power to deal with the amendment of charters and local and special laws relating to those specific cities, namely, the property, business and local affairs of the city, in no manner referring to government. In order to make "assurance doubly sure," the draftsmen of this provision have so carefully riveted themselves to the idea of laws affecting property, business or local affairs, as distinguished from those of government, that on page 6, line 4, there is a distinct specification that the legislative authorities of the city may enact amendments to the charter or to any special or local laws affecting the property, business or local affairs of the city, being silent on the subject of government.

Mr. Franchot—Is it your opinion that the words on page 5, line 4, "relating to its property, business or local affairs," or rather, whether the adjective or participle "relating" qualified the word "charter" as well as qualifying the word "law"?

Mr. Marshall—I think it qualifies both. I cannot read it in any other way but as qualifying both of the antecedents.

Mr. Franchot—If it was intended that it should qualify "charter," would you think it was appropriate language if it should read this way, omitting any reference to a special law: "The power, as hereinafter provided, to amend its charter relating to its property, business or local affairs?"

Mr. Marshall—I am merely pointing out the difficulties of interpretation which present themselves to one who is not a foe of this proposition, but one who is a friend of the general idea, and to indicate the thoughts that arise in me.

Mr. Sanders—I would like to observe at this point in your argument that the sentence which begins on line 4 of page 6, to which you have called attention, which you have mentioned as being limited to granting power to amend a charter or any special or local law affecting the property, business or local affairs of a

city, is not like the sentence at the commencement of the third paragraph on page 5, which gives authority generally to revise a city charter. There is no limitation there.

Mr. Marshall — The trouble I find there is that the business end of that section, if I may so call it, that clause, as well as the clause on page 5, to which you have called attention — that which strikes the charter between the eyes is the reference to “property, business or local affairs,” and it maintains an absolute, deadly silence on the subject of government.

Mr. Wickersham — Mr. Marshall, when you speak of the management or conduct of local affairs, does not that necessarily include municipal government?

Mr. Marshall — I don’t think so.

Mr. Wickersham — Then, as you interpret this, you mean to say that the Committee has not granted, by this grant of power to the cities, the power to conduct their own municipal government?

Mr. Marshall — I should say that it is left in great doubt. We are, like Mahomet’s coffin, suspended in mid air for the reason that you must give effect to the word “government” as used in section three, in contradistinction with the other three words which are used in section four. The word “government,” finding its lodgment and its home in section three only and not being once referred to in section four, it seems to me that the framers of this section have created a manifest point of distinction and of cleavage between those ideas which are comprehended in the word “government,” and the ideas, whatever they may be, which are comprehended in the terms “property, business or local affairs.”

Mr. Wickersham — Mr. Marshall, you understand, do you not, that it was the intention of the Committee, however imperfectly expressed, to confer powers of local government on cities?

Mr. Marshall — I have heard it so stated, and I take it for granted, and I should certainly think it would be a most inexcusable mistake if that had not been the intention of the Committee. I am not here suggesting for a moment that that idea should not find expression in this clause. My contention is that the expression of that idea should be so clear that he who runs may read. I do not desire to have a matter of this importance pass muster in a Constitutional Convention, and find the Court of Appeals, when it comes to deal with this subject in the position of having a chronic headache before it can determine what was intended by the framers of this provision.

Mr. Byrne — When the amendment uses or makes use of the word “government” in section three, isn’t that a suitable term when it is going to be applied to the government of all the cities

of the State; and then, later on, when it comes to point out the powers of a particular city, it says it shall have power to do what?

Mr. Marshall — The trouble with Mr. Byrne's question is that it is answered by the language to which he has referred. And that is, "laws relating to the government of cities and applying to less than all the cities of the state." Therefore, that word "government" may not have that broad signification as applying to all cities, because this refers to government of less than all the cities—

Mr. Byrne — Will the gentleman yield again? I have not finished my question. Do you hold, then, that by the use of the words, "Every city shall have exclusive power to manage, regulate and control its own property, business and local affairs," that was not giving to the city any powers of government?

Mr. Marshall — That is the very point I am addressing my remarks to. I say it may have been intended to have given power to the government, but it has not been done so clearly but that a very serious question of interpretation has arisen.

Mr. D. Nicoll — Now, the power is given here to amend its charter. What is a charter? A plan of government. And when the power is given to amend a charter, what can it be except to amend its plan of government?

Mr. Marshall — That is followed by the words "relating to its property, business or local affairs." It says nothing on the subject of government.

Mr. D. Nicoll — The charter must include the whole plan of government, the board of aldermen, the board of estimate, and the common council, the different departments. What else does it provide for?

Mr. Marshall — It may also refer to matters relating to State functions. And you must differentiate. I wish to emphasize this — I merely say this to the gentlemen of the Cities Committee — I wish to emphasize the idea that I am merely pointing out this unfortunateness of language, this apparent omission to say just exactly what you mean in so many words.

Mr. Latson — Will the gentleman yield for a moment — long enough to permit me to say I believe I can make it evident what the Committee meant?

Mr. Marshall — I think I know what the Committee meant.

Mr. Latson — Mr. Chairman, if the gentleman will yield, I wish only to say that the faultiness of language wherever it may occur is attributable to a condition of affairs that must be apparent when constitutional language is sought to be framed by the contribution of many men around the table. If the gentleman would care to have me demonstrate to him in a few words the true meaning of the Committee, I can do so.

Mr. Marshall — I think that we heard your explanation as to that this morning, Mr. Latson, and it is entirely satisfactory to me, at least, to know what the Committee intended, but if the gentleman wishes to suggest that you can frame a Constitution by means of a shovel, I certainly take exception to that method of preparing a Constitution. Words must be used with great care and in such a way that they do not make trouble and ambiguity.

Mr. Latson — I fear the gentleman either must misapprehend the force of my remark — the Committee has sought to bring before this Convention certain propositions and I think, as I have stated, that the Committee do not feel that the proposition of constitutional language has yet been arrived at, and I have sought only in my request that the gentleman yield to me for a moment, to make clear what the purpose was, without addressing myself to the precision of language.

Mr. Marshall — I think I understand what the purpose of some members of the Committee was.

Mr. Latson — This particular language I have not spoken of.

Mr. Marshall — I prefer the O'Brian school of interpretation to the other two schools.

A Delegate — Seventeen.

Mr. Marshall — Well, not seventeen. At least I have heard of three.

Now, all that I have said on that subject is merely in the direction of a suggestion that this language can be made clear and the hope that it will be made clear.

Now, coming to the subject which I suggested in my question to Mr. Wickersham while he had the floor, as a differentiation with respect to governmental powers between those which relate to the exercise of a State function and those which relate to a local or municipal function, and which I think may be found to be a workable theory. I wish again to refer to the decision of Mr. Justice Woodward in *McGrath v. Grout*, in 69 Appellate Division, p. 320, where he pays a rare and most unusual compliment to a private citizen in quoting in the course of his opinion the views of that private citizen. I think Mr. Low will be interested in hearing these remarks. He says, referring to the debate in the Constitutional Convention of 1894, that "Mr. Johnson then called attention to the written opinion of Mr. Seth Low upon the question of the line of demarcation between matters that pertain to the municipality and those which are of the sovereignty of the State, and added: 'So that our simple proposition here is that we should give a certain degree of municipal independence as to matters purely of the city, as to that which does not interest the community outside. I will state the distinction a little further.

Earlier I have referred to the facts of election as being a State function * * * The question of election, the question of education, the question of health, the question of police, it seems, certainly are matters as to which the vital concern is in the State.' " Now there is a recognition in clear language of this line of demarcation. I think that the time has come when we may, with profit to the State and to the municipality, recognize that line of demarcation in the Constitution and make that the basis of a solution of this controversy which has long obtained with respect to the overlapping of the State and municipal functions. We can, by preserving that clean-cut distinction in the Constitution, deal in a satisfactory manner, I trust, with this entire subject of home rule, retaining to the State that which is the State's, and giving to the municipality that which is of the municipality.

Mr. Wagner — Then, under your interpretation of this provision, all legislation which affects in any way the government of a municipality must originate in the Legislature?

Mr. Marshall — No. No. Just the contrary. My idea is that the permissible distinction would be that in those matters —

Mr. Wagner — No; I am saying your interpretation of the proposal as it now reads.

Mr. Marshall — My interpretation of the proposal as it now reads is that the only permissible view to be taken of the language is that it requires that all matters relating to the government of the municipality must originate with the Legislature.

Mr. Wagner — I did not understand you agreed with the interpretation by Mr. J. L. O'Brian.

Mr. Marshall — I did not understand that he went quite so far.

Mr. Wagner — Oh, yes; that is his interpretation.

Mr. Marshall — Whereas, that of Mr. Low is that it does not go so far, but that it does in respect to the amendment of charters, etc., in the revision of the charter, permit a new charter or a revision of the charter or an amendment to the charter as to matters of government as well, dealing with the subject of government in its broadest sense, whereas, as I have already indicated, another gentleman of the Committee, Mr. Sanders, believes that the powers with regard to government are concurrent.

Mr. Wagner — That would give the city no home rule.

Mr. Marshall — That would give the city very poor home rule with regard to property and local affairs.

Mr. Franchot — I should like to ask a question — to hark back to what you were saying before Mr. Wagner asked his question,— with respect to the defining of the line of demarcation between those matters which this Convention sees fit to confer upon cities and those matters which it will intend to reserve to the State, and

to ask you whether you had in mind, in referring to the possibility of such definition, the possibility of doing it in any other than concrete language, that is, by concrete reference to the particular powers which are doubtful and those only?

Mr. Marshall — You mean by enumeration?

Mr. Franchot — No — if you will permit me to explain what I mean: As contradistinguished from enumeration of powers given to the city or powers reserved to the Legislature; as contradistinguished from such enumeration, the picking out of the particular questions of doubt which experience has demonstrated must arise, and by appropriate language clearly negating any attempt wholly to enumerate and limiting our effort at definition to the definition of only those particular doubtful questions.

Mr. Marshall — There are two methods of accomplishing that: Either in some such form as you have suggested, or by using language which is broad and at the same time comprehensive, indicating if possible this distinction in so many words, as between State functions of government which are well understood — which is a well understood idea, and those which do not involve the exercise of State functions, as using the word “local” or “municipal” functions. Now for the moment I am inclined to the latter method, but I file a caveat immediately against being held in that particular form of language, until I have given it a little better inspection and analysis.

Mr. Quigg — If the word “government” were put in, what in your opinion would remain of the sovereignty of the State?

Mr. Marshall — If the word “government” would be put in section 4?

Mr. Quigg — Yes.

Mr. Marshall — I fear nothing would be left to the government of the State, if it were there without limitation or qualification, I mean by that, the word “government” alone.

Mr. Wickersham — Well, that was not Mr. Quigg’s question, if I understand it.

Mr. Marshall — May I state what I understand Mr. Quigg’s question to be: That if in section 4 there were added to the words “property, business and local affairs” the word “government,” well, then, there would be nothing left to the State.

Mr. Quigg — What would then remain of the State’s sovereignty

Mr. Marshall — If that stood alone, I am inclined to think that it would cover every function of government and would be all-embracing. But, of course, it might be modified by other phraseology in section 3, or some other section, which might cut down that universal grant of power.

Mr. Quigg — Does the gentleman see that language in section 3, as it now stands?

Mr. Marshall — As I behold section 3, as it now stands, I see only that the power to deal with the government of cities is vested solely in the Legislature.

Mr. Wickersham — Mr. Chairman, if the gentleman will yield, I propose an amendment, Mr. Marshall, an amendment to line 14 of section 4, which would make it read: "Each and every city shall have exclusive power to manage, regulate and control its own local government, property and affairs."

Mr. Marshall — I recognize in that a very distinct improvement upon the language employed in the measure, as reported by the Committee.

Mr. Wickersham — Mr. Chairman, I had not finished my question. I was intending thereby to make clear the meaning which I read. I do not agree with your interpretation at all. With all due respect to your superior capacity as an interpreter of statutes and constitutions, I think it a very forced and strained and impossible construction.

Mr. Marshall — Well, I have good company.

Mr. Wickersham — You understand, Mr. Marshall, I speak with entire respect; but in other words, I do not suppose for a moment that if a municipality is given power to manage its own property, business and local affairs, it is without the powers of self-government which go with the management and control, and which are a vehicle for the management of its local affairs. But the mere fact that a gentleman of your eminence raises the objection, is abundant reason for recasting the language so as to avoid yourself, in the future, or some other gentleman of like eminence, making the criticism, and what I sought by that amendment was to bring out clearly what I understand it was the intention of the Committee to grant. Now I take it you will agree with me that unless the city is given powers of local government, it has got nothing.

Mr. Marshall — I agree with you; without some such power the whole thing would be a snare and a delusion.

Mr. Wickersham — Therefore it becomes, doesn't it, simply a question of framing language appropriate to give that grant and retain the sovereignty of the State?

Mr. Marshall — My remarks have been directed to that subject and I merely suggest that the words "local government" as you have proposed them in your amendment this morning, are entirely satisfactory. Perhaps "municipal government," if you please, but "local government" meets my thought and my ideas. But in sharp contrast to that I think it also necessary in section

3 to make it clear that so far as the exercise of State functions is concerned, these governmental functions must be preserved by the State in the manner prescribed in section 3 subject to the exercise of the suspensive veto.

Mr. Wickersham — Mr. Chairman, if I may say so, I quite agree with that.

Mr. E. N. Smith — The use of the words "local government," is not that susceptible to the interpretation "within the locality?"

Mr. Marshall — I think not.

Mr. E. N. Smith — Should not it be government as to its local affairs?

Mr. Marshall — We have the words "local affairs." Mr. Wickersham's amendment was "local government, property and affairs."

Mr. D. Nicoll — I made a motion to amend section 4, on Saturday last, by including the word "government." "Government" pure and simple, without any modification. I understood you to say that that would be a surrender by the State to the city of the sovereignty of the State. Did you mean that?

Mr. Marshall — If you do not qualify the word "government" as used in section 4, if it is without any qualifying phrase, then the permissible and I think the only interpretation that could be given to the language would be the surrender of sovereignty with regard to the whole subject of municipal government and matters pertaining to municipal government, to the locality; it would be complete.

Mr. D. Nicoll — No, no; he asked you whether or not that would be a grant of power, of State sovereignty to the municipality, and you answered yes. You certainly answered that?

Mr. Marshall — I mean to say, if you deal with the whole subject of government as one entire thing, without qualification, that the granting to the cities in the following language: "every city shall have exclusive power to regulate, manage and control its own government, property, business and local affairs," it would lead to the conclusion that the entire subject of government is conferred upon the locality.

Mr. D. Nicoll — But, Mr. Chairman, what is conferred upon the city is the power to manage, regulate and control *its* government, not the State's government, or the State's functions; *its* government and no other kind of government. How could that include the grant of State sovereignty?

Mr. Marshall — Suppose you diagram that and put in a circle the word "government," what would be in the circle would cover the entire subject of government; every phase of it.

Mr. Franchot — Mr. Chairman — are you not attaching, Mr.

Marshall, too little importance to the reservation in the State of the right to enact general laws which affect in any way whatever even the minute detail of local self-government?

Mr. Marshall — Well, if that is the case your grant would be given with one hand and taken away with the other.

Mr. Franchot — Mr. Chairman, if the gentleman will yield further. Don't you consider it rather a logical idea that when the matter is of so general concern to the State that it is willing to impose a particular requirement upon every city of the State with respect thereto, that what has heretofore been *local* might very well be conceived to be a matter of general State policy.

Mr. Marshall — It is your idea that the State could take the power away?

Mr. Franchot — Provided that the State as a Legislature is willing to take the particular thing away from each and every of the cities of the State.

Mr. Marshall — That would mean that having granted power to deal with the subject the State can still, by a general law so long as these laws are repealable, without distinction, take away some special or particular power from all the cities.

Mr. Franchot — Yes, and I was calling your attention to that at this particular point of the discussion in order that the point might be made that the State sovereignty, the paramount authority of the State with respect to local affairs, is very sufficiently conserved, by the committee's report.

Mr. Marshall — Well, I do not so construe it, because I can conceive that the Legislature might be in a position where it would not desire to interfere with the exercise of powers of the broadest character, in Buffalo or Rochester, or Syracuse, but might be strongly tempted to interfere with those powers in New York and Albany and Poughkeepsie, and the only way it could deal with that subject, according to your contention would be by passing a general law which would make the sheep go with the goats.

Mr. Franchot — Does not the use of the word *tempted* imply that there would thereby be evils in so treating those matters?

Mr. Marshall — I am not dealing with the question of evils, but as to the best operation of the other provisions as to the interpretation of which there is a difference of opinion among various members of the Committee.

I again repeat that all that I have said on this subject relates solely to the granting of powers of government. A clean-cut differentiation exists between those things which are municipal or local in their operation, and those which are essentially State functions. I do not desire to monopolize the discussion, but dealing with the language as it has been proposed, various ideas have

suggested themselves to me, some of which have already been referred to by others, as, for instance, Mr. Smith very properly asked, why should the question as to there being a referendum with respect to revision of the charter of a city, be compulsorily submitted to the electors? Why should not the cities decide for themselves whether that course should be pursued? Why should the language not be permissive instead of mandatory? The question has also occurred to me, whether it would not be wise to indicate what percentage of electors is required to vote in order to make action on such referendum effective, and so, too, as to what percentage of voters should be required to act upon the revised charter as recommended by the commission of charter revision. So, also the question arises as to what would be the effect upon revising the charter submitted to the people if the Legislature should be willing to approve of the measure in its essential features, but should desire to object to certain clauses or provisions only, or should seek to modify specific provision and no others. It is intended that there must be an acceptance *in toto* or a rejection *in toto*? Is there to be no possibility of a modification? The question also arises as to whether or not in the event that the Legislature, at the session at which a revised charter is presented for action, should disapprove of it, and at a subsequent session might desire to exercise a *locus penitentiae* and should determine to adopt the revised charter as previously proposed, is it necessary in such a contingency to wait eight years before such revision shall again be submitted to the Legislature, or is it permissible that the Legislature may at a subsequent session act favorably upon such a revision? I also call attention to the fact that in line 21, page 6, it is provided "a charter revision and the amendment or repeal of any provision of law, enacted pursuant to this article, shall be deposited with the Secretary of State and published as the Legislature may direct." You will note that here there is dealt with,—or that we deal with a charter revision and amendment of a provision of law or the repeal of a provision of law. In none of the previous sections or clauses, is there any reference to repeal.

It is very evident that it may be just as important to give to the legislative authorities the right to repeal a provision of law as it is to amend it, or to make a charter revision, and for that reason I have proposed after the word "laws," line 5, page 6, to insert the words "or may repeal any provision of law pursuant to this article," and after the word "amendment" in line 10, page 6, and on line 16, page 6, to insert the words "or proposed repeal," and on line 2, page 7, after the word "relates" to insert "or concerning the proposed repeal thereof or any provision therein concerned:" the idea being, if possible, to make it clear,

that not only shall the locality have the right to propose a new charter, or amendment to a charter or to any special or local laws, but also the repeal of any provision contained in a charter or in any special or local laws. I also call attention to the language on line 23, page 4, subdivision "a," which says that among the powers deemed to be included in the grant given to the city, to manage, regulate and control its own property, business or local affairs, is a grant of regulating "the powers, duties, qualifications, mode of selection, numbers, terms of office, compensation and method of removal of all city officers and employees, and of all police and health officers and employees." Now, it is generally conceded that police and health officers and employees are State officials, are officials performing State functions. I concede that power which is granted with reference to police and health officers and employees who are paid by the city, shall be exercised by the municipality, but there are, or may be, police and health officers and employees, who are not paid by the city, who are paid by the State as exercising State functions, and certainly they should not be subject to removal by the city authorities. I, therefore, suggest that after the word "employees" in line 23, page 4, there be added the words, "paid by the city," so as to limit the right of removal to such police and health officers and employees who are paid by the city. There are in addition, however, to these other officers, to whom I do not assume it is necessary to refer now specifically, but inasmuch as these particular officers performing State functions as well as city functions, have been mentioned, then it is certainly necessary to qualify the phrase so that it should be limited to those who are paid by the city. I have just hastily gone over a number of the provisions of this section, which, at some time or another, should be dealt with by the city.

Mr. R. B. Smith — I do not intend at this time to discuss at length the provisions of the so-called home rule amendment to the Constitution, because it seems apparent that the Proposed Amendment, reported by the Committee, is in such an infantile condition, that it must go somewhere to be perfected before we can consider seriously and at length the final provisions which are to be accepted or rejected by this Convention.

I do wish, however, to express a few conclusions and a few observations. The subject of constitutional home rule, is one with which I labored in the last Constitutional Convention in conjunction with Jesse Johnson, chairman of the Committee on Cities, Senator Lewis and others. I recall definitely the efforts which Mayor Low made before that Committee in order to get something into the Constitution which would define a line of demarcation as to what cities could and could not do, and since

that time in an experience of twenty years, in which I have been engaged, to a large extent, in the drafting of charters for cities, it has been my regret that the Constitutional Convention of 1894 failed in its efforts to elucidate the situation then presented and to provide constitutionally what I believe to be the measure of home rule which they should have; and let me say, that strange enough, in this Convention apparently I am in favor of granting to cities a much larger degree of home rule than either the members of the Committee or the speakers who have preceded me. So far as this proposed amendment is concerned, briefly let me say, in my judgment, it does not confer a single power upon cities, either absolutely or conditionally, except what may be technically known as municipal powers or municipal functions. There is no use of discussing that at length. I am expressing that view, for this reason. Let me suggest to you what is a charter? I have asked that question. Let me in a feeble way say what is in my mind concerning it. A charter, from the earliest time, has always been a grant of power. To corporations it is a grant of corporate power. Now, a city exercises two classes of power. In the first place, it exercises corporate or municipal power. In the second place, governmental functions. The first it exercises by virtue of the charter; the second it exercises as a duty which is devolved upon it by the State in the exercise of its sovereign tax power, but in your so-called charter, that is a misnomer, technically used; because under constitutional language, where we have mixed up in the New York city charter in the same power the exercise of governmental functions, which it exercises as the administrative agent of the State and municipality, functions which it has exercised in a corporate capacity, you amend it, or try to, and see where you come out. Your amendment can only relate to municipal functions; it would not interfere at all with governmental functions. And so, when we get back of this proposed amendment, you find you have mixed it all up. You say the city shall exercise certain governmental functions, by virtue of power delegated absolutely in the Constitution, without reference to the Legislature. You say it shall have some other. Why? Well, it can initiate them first, then come to the Legislature, subject to a veto power. Now, the line of demarcation between the two is such that upon every proposition, whether it originate in the locality or whether it comes up here subject to the veto power, to be acted upon under the veto power, you have raised a constitutional question which has got to go to the Court of Appeals for solution and you can't avoid it. You get down to one of two things. If you are going to grant to the municipalities the right to exercise municipal functions, do it in one of two ways:

either grant that power in the Constitution to the municipalities exclusively without coming to the Legislature at all, make that clear, or else permit the Legislature to do it, and if you ever permit the Legislature to do it you won't be a year older before the Legislature will do it.

What is the trouble? Why, in Section 27 of Article XXIII of the Constitution, the Legislature delegated to counties which exercised nothing except governmental functions, certain powers of local legislation. They granted to the cities in the same Constitution nothing except the power to provide for government.

Therefore, when you come to ask whether a city has legislative power or not, it is subject to a strict construction absolutely. Now, what has been the history? I am assuming no greater knowledge than any one else, but I will say that, during my experience in the Legislature, perhaps I have been consulted as much as any one else in connection with charter making by all of the cities of the State. Every time, as Mr. Hinman has said, from his experience of only six years, when they have come here with charter amendments, they have said, "Why don't you put this in your ordinances?" "Why don't you put more of it in?" And, in the New York charter, we attempted—it is true we attempted to write into ordinances a number, an innumerable number of absolute sections of the charter, and we were met on every hand by the proposition, "Well, this carries with it the enforcement of the penalty; we are not quite sure whether the Legislature can delegate that power or not, so let us be safe." And so our charters have become a mass of legislative detail which should be local legislative details, simply because the law officers of the cities had been unwilling to assume the responsibility for an adverse decision. What then is the trouble? It simmers itself down into the inability of the Legislature to delegate legislative power to a locality, to a city. If that has been the only trouble, and that has been the only trouble, why isn't the solution easy? Why do you have to go all through a maze of language, subject to construction, bothersome? Why don't you get right down to the plain facts in the case and say that the Legislature may delegate its powers? Why limit it? Why limit it to municipal functions? As Mr. Hinman has pointed out, the State has delegated the health functions of the State to the city of New York. The general health law of the State does not apply to New York city at all. You may want to delegate further governmental functions to the city of New York. And so then, why not? Let them try it out there. If they try it out they ought to be able to come back and say they had enough, and, in my own judgment, I believe they will come back very soon, if you give it to them. I think it will come back and want the protecting arm

of the State to secure, or limit the scope and operation for the minority of the people of the city.

Mr. D. Nicoll — Of course, if a Legislature can confer that power on a municipality, the Legislature can take it away?

Mr. R. B. Smith — Yes.

Mr. D. Nicoll — Don't you understand that what the advocates of home rule, or of local self-government, mean, is the power of a permanent and stable government in a municipality over their affairs?

Mr. R. B. Smith — I understand it.

Mr. D. Nicoll — That is what is meant.

Mr. R. B. Smith — I understand that thoroughly.

Mr. D. Nicoll — You don't mean a grant which can be taken away?

Mr. R. B. Smith — I understand that thoroughly. But will you tell me why, upon what grounds, or upon what reason they have any grounds for doubting the good faith of the Legislature. Have the Legislature ever taken away from a city a privilege or a power granted? Oh, yes, there are several cases, in which these Legislators, relying upon the good judgment of certain people in the city of New York, whom we believed to represent the best interests of the city, some of whom are delegates here, have exercised their benevolent influence over certain local affairs which I have no doubt has redounded to the benefit of the city itself.

Mr. Wagner — You have stated the very reason why New York is crying so loudly for home rule and that is that they prefer the judgment of their own citizens rather than the judgment of the gentlemen from Onondaga or somewhere else, as to how they should govern themselves.

Mr. R. B. Smith — And still you get in this bill — all you are getting under this bill relates simply to municipal functions. Why do you limit it to those?

Mr. Wagner — Mr. Chairman, I hope the delegate does not understand me as approving this proposition. I agree with you, that it does not confer genuine home rule upon the city of New York.

Mr. R. B. Smith — I do not think it confers any home rule on any city.

Mr. Wagner — Well, all right, or any city.

Mr. Law — I would like to ask Mr. Smith his opinion whether if the word "government" were inserted, as Mr. Wickersham has proposed, it would give any amount of home rule?

Mr. R. B. Smith — I don't think so. In other words, this, which you will find stated in the Attorney-General's opinion, and

which is clear, is the fact that the State will not ever be presumed to make a grant of its sovereignty unless such grant is expressed in clear and concise terms. You cannot do it by innuendo. You cannot do it by implication. If you ever do it, what you have got to do is to express your meaning in no uncertain language.

Mr. Wickersham — Will the gentleman please suggest what he considers to be plain and unequivocal language.

Mr. R. B. Smith — Take my proposed amendment.

Mr. Wickersham — Oh, Mr. Chairman, that proposal of the delegate is a perfect pretense of home rule?

Mr. R. B. Smith — Why?

Mr. Wickersham — Because it confers with one hand, what may be taken away with the other, and that is no genuine home rule which the people of this State will regard as a compliance by this body with a demand for home rule.

Mr. R. B. Smith — I understand, and I have stated that there is a general demand from all of the cities for home rule which the Legislature has granted in general terms, and in terms, as I understand it, completely satisfactory to the people of the city of New York and the other cities.

Mr. Wickersham — The gentleman has just stated, only a few moments before, that grant was beyond the power of the Legislature to make, and I asked if the gentleman will agree with me, that if it had the power to make it, it has the power to take it back.

Mr. R. B. Smith — Precisely.

Mr. Wagner — Will the gentleman yield just at this moment to follow up a question which Mr. Wickersham just asked, or a suggestion he just made? We don't want to get in the position of giving, or leaving the power within the Legislature to take back this home rule, that they may give at any time, but under this provision has not the — or does not the Legislature exercise the same and exact power by declining to give you home rule by nullifying a proposed amendment to the charter that may be enacted by the local authorities.

Mr. R. B. Smith — I was about to say that I understand that there was a general demand for home rule in all the cities of the State. Well now, the cities of the State control this Legislature, absolutely, unequivocally, and are they going to consent — if there is this general demand, then are they going to consent to the Legislature taking something away? I say to you that there is no danger of the Legislature ever taking anything away, but I would dislike to preclude a city from the privilege of giving it back to the Legislature when they get tired of their home rule, and I would like to see them handed all of the home rule that they

wanted in the meantime until they will run the limit of the rope and then see how soon they will come back, because it will be an interesting experiment in municipal government, which I would love to see tried out. Now, I am perfectly willing — of course I cannot meet this proposition, I do not propose to meet it, because I know there is no danger ever rising that the right will ever be taken away, or that the cities would ever permit them to take it away. That is where we fundamentally disagree, because I have absolute faith in what the Legislature will do, and that faith is not based upon guesswork, or outside observation, but from actual experience, and I am not prepared to yield one iota on that proposition. I am perfectly willing to go further from a practical point of view. Let us get down to practical politics, if I may use that term in its highest terms in the science of government. We are presenting to the people of the State this fall a proposed Constitution, and if we get it into proper shape before we get through with it it will be adopted. The people who are for home rule have expressed their disapproval of this proposition. They say they don't want it. My people, that is, the mayor as representing the people of the city of Syracuse, so far as he does, says that he does not want it. He wants me to vote against it. The City Club and the Citizens' Union, with whom I am glad to find myself in accord for once, say that they don't want it. Now, if there isn't anybody who wants it, what is the use of putting something here that nobody wants? They say, why we would rather leave it to the Legislature than without any additional grant of the Legislature. Now, in any event, my proposal proposes to grant, to give to the Legislature enabling power, to enable it to do what these cities want done, to enable it to put into effect what the Legislature has already done, and therefore, all we would have to do with that proposition is, at least, to give them some relief, and, as I think from a practical point of view, it would relieve the situation to some extent, and I am willing to go further, I am willing to accept an amendment which, if the Constitution is adopted, will upon the first day of January, put into full force and effect chapter 247 of the Laws of 1913, showing my good faith, and hand to the cities, something definite, and they will know during this campaign, that on the first of January, they are going to receive something.

Mr. Wickersham — Would you be willing also to put in there a provision that the Legislature should not take back any of the powers it granted, except upon the application of the city?

Mr. R. B. Smith — I think that might be perfectly safe, because in the cities there may be a change of administration, and I assume that at some time there will be some administration that will want them to take back some of the grant.

Mr. Wickersham — There is only one reason why I asked the question and I have not had an answer.

Mr. R. B. Smith — I am not quite sure.

Mr. Foley — Under the present plan, don't you think that the Legislature could take everything back — everything that had been given, could be taken back by general law.

Mr. R. B. Smith — The general law proposition, as stated in here, doesn't mean much. Applying to all the inhabitants of the State, or to all the cities of the State, of course, that they can do now, and I don't think that there will be very much interference.

Mr. Foley — Would you be willing to accept, Mr. Smith, the amendment which Mr. Franchot has included in his amendment, which gives the cities the authority, or power, to adopt their own charter, as an alternative, and as a weapon, you might say, at the hands of the city to obtain from the Legislature a proper amount of local government, and with provisions prohibiting the Legislature from amending these charters?

Mr. R. B. Smith — I would give the city the power to adopt its own charter, after a referendum, in which it decided it wanted to. I don't think that the city of Syracuse should have a form of government of this kind forced down its throat if it does not want it. I am inclined to think that the thinking people of that city, after they had looked to the mayor and common council and found out what they would get from them, would be glad to have the Legislature reserve these powers, and I am not sure but what the city of New York, unless they have changed their mind in four years, would feel in the same condition, if they thought the Board of Aldermen was going to have very much to do with the amending of the charter.

Mr. Chairman, I have said briefly what I have said at the present time, and I offer the following substitute.

Mr. Chairman — The Secretary will read the substitute.

Mr. R. B. Smith — Mr. Chairman, I will state it.

The Chairman — You are moving to substitute your bill for this, are you not?

Mr. R. B. Smith — With the following amendment. I will read it myself. I think I can make it plain. Yes, it is a substitute. It is amendment No. 797, on page 1, after "subject to the" in line 5, insert "specific"; on page 2, line 1, after the word "expedient" insert "whenever the legislature shall have delegated to a city any such power the city may amend or repeal special or local laws, so far as necessary to enable it to fully exercise the powers delegated." In other words, I am endeavoring to arrange so that if this should be adopted, chapter 247 of the Laws of 1913, would go into effect immediately after with the adoption of this provision in the Constitution.

The Chairman — And as so amended, the Chair understands you move your bill as a substitute. There is no desire to have it read further, is there, Mr. Smith?

Mr. R. B. Smith — No, sir.

Mr. Reeves — I wish to offer while amendments are being offered, one other amendment. This Proposed Amendment explains itself.

The Chairman — The Secretary will read the proposed amendment.

The Secretary — By Mr. Reeves: In line 7, page 5, strike out the word “eight” and insert in its place the word “twelve.”

Mr. Latson — May I take just a moment to say a word with reference to the differences in construction of certain language here which arose between Mr. Marshall on the one hand and General Wickersham and Mayor Low on the other. I think, I think there can be no doubt as to what the draftsmen of this Committee on Cities and the subcommittee meant and intended, and if there is any doubt about the language, as General Wickersham says, it is extremely important that the language be corrected. But, there can be no doubt about the intention of the Committee and no doubt about the fact that the construction put upon that language by Mayor Low and by General Wickersham is the construction intended by the Committee and I can demonstrate it to you in just a moment.

If you will examine the language found at the top of page 5, line 3, paragraph b, let me say that when that was first drafted it stopped at the word “charter.” Then it read “*b. The power as hereinafter provided to amend its charter*”. Now that is all there was to it originally; and then in conference about the table, some member of our committee called our attention to the fact that there were undoubtedly some local or special laws affecting the property, the business or local affairs of the city, and we ought to make sure that we gave the power of amendment to certain laws, and thereupon, after that suggestion was made, these words were interlined: “or any local or special law relating to its property, business or local affairs.”

So that clearly the intention of the draftsman was to provide that in paragraph *b* the city should have the power to amend its charter as hereinafter provided, in any respect, and also the power to amend any local or special law,— not every local or special law, but any special local law relating to its property, business or local affairs. “Turning to page 6, line 5, we find the words ‘the legislative authorities of the city may enact amendments to the charter.’ Some question arose with reference to the meaning of this language and the intention of the draftsman. The provision

then read 'the legislative authorities of the city may enact amendments to the charter or any special law,' etc., etc. You will observe that I have omitted the word 'to'". Our attention was called to that fact, and after we discussed it over the table, and at the suggestion of one of our members, the word "to" was inserted, so as to make it perfectly clear that the proposed amendment under consideration was meant and intended to amend the charter as well as to amend any special or local laws. As I said before, it may be that this language is not apt, but I do not think that there can be any doubt that such was the intention of the Committee.

Mr. Franchot — I am emboldened by the discussion which has taken place this afternoon to offer at this time the Proposed Constitutional Amendment which now bears the printed No. 796, as a substitute for the bill, the proposed amendment, introduced by the Committee, to be considered along with the other substitutes and proposals which are now before the Committee of the Whole. This proposed amendment, No. 796, in its present form, embodies pretty well the ideas of Mr. Foley and myself, the two members of the Cities Committee who joined in the minority report. It has been drafted, after careful work and conference by Mr. Foley and myself, and I offer it, not only on account of what Mr. Marshall has so well said in my opinion as to the necessity of the use of precise language in fixing the source for twenty years of governmental power in cities, but also with a view to putting before the Committee of the Whole what we considered to be a practical working compromise between the conflicting views which have had expression throughout this discussion. The proposal attempts, probably does not wholly succeed, but it at least furnishes the framework for an endeavor toward a complete success in defining these specific powers which are likely to be in doubt when a practical attempt is made to act under the provisions of the Constitution. In addition to that it occupies a middle ground between those who advocate a direct grant of home rule powers to cities, self-executing in its nature, so that without further action of any kind on the part of the Legislature of the State the various cities of the State can at their option, at the particular option of each, elect to exercise constitutional power of home rule, and at the same time confer upon the Legislature the right to delegate its legislative powers with respect to the government of cities, to cities; the general idea underlying our proposal being that this provides machinery for putting to the test the absolute assurance which Mr. Ray B. Smith gives us that the Legislature will act in the direction of the conferring of larger powers upon cities. Under this proposal, into the specific language of which I will not go, it would be possible for every city in the State to apply to the

Legislature and if the Legislature be willing to grant it, to secure home rule powers subject, of course, as all such legislative grants must be, to the power of the Legislature to regain, to take that back which it has granted and which provides this safeguard, that if the cities in practical experience find that they cannot secure by legislative grace, that degree of home rule which each particular city desires, then they may elect, each of them separately, by the self-executing machinery of the provision, to exercise these home rule powers which are granted as a matter of constitutional right. I offer this as a fitting basis of clearly phrased compromise, holding, as does Mr. Foley, I take it, that the particular method of compromise, adopted by the Cities Committee, namely; the method of granting to cities the powers in one phrase, or one sentence, or one particular part of the proposal, and then proceeding in another phrase, or sentence, or other particular part of the proposal, to take that which it has granted,— that that is not the proper method of compromise, and that by such method we are not going to arrive at anything which expresses the intention of this Convention in language not open to extreme doubt and confusion.

Mr. Low — When the proper time comes I propose to offer this resolution: Resolved, That when the Committee rise it report progress and recommend that the report be recommitted to the Committee on Cities, together with all proposed amendments and substitutes with instructions to report back on Thursday morning, August 19th, at 10:00 A. M., and that the amendment retain its place on General Orders. I will not offer this amendment now, if any one else wishes to speak or to offer suggestions. My hope is that before we adjourn at half past five every definite suggestion that is to be made will be made, and when we are in Convention I shall offer a resolution asking that all things that have been submitted to-day be printed for the use of the Convention.

Mr. Franchot — In view of that intention as expressed by Mr. Low, it will not be necessary or fitting for me to say anything further in support of this proposed substitute, and I will merely offer it for the consideration of the Committee of the Whole and for the consideration of the Cities Committee when that reference back to it is made.

The Chairman — Do you still desire to have that printed as an amendment or do you withdraw it as an amendment?

Mr. Franchot — It is already printed, Mr. Chairman, and upon the files of the members, and in its printed form is an amendment to the original proposition which I offered in the early days of the Convention, and, therefore, it is not necessary to print it again.

Mr. Foley — I think the suggestion of the Chairman of the Cities Committee is a most excellent one, and I desire to point

out that the Convention for the past few days has been going through what we went through in three or four months, and it was deemed necessary to have an amendment out for discussion before the Convention so that the Convention could really appreciate the problems involved in this proposition, and I am heartily in accord with the Chairman of the Committee in his suggestion. The only suggestion I have to offer is that the time seems rather short, and it should be left to the Committee to decide when a report can be made.

Mr. Low — Mr. Chairman, I think it is better to fix a time because there are a great many important matters to be disposed of by the Convention, and I think I am within the bounds of fact when I say there have been differences of opinion in the Cities Committee and there may be again. Just the same, as I infer, there are some differences of opinion in the Convention itself. Nevertheless, I think a time when we must report is the very essence of the request, otherwise I believe that the Cities Committee is capable of discussing this matter until the Convention adjourns. I do not say that it would, but I think it could, and therefore, when I offer the resolution, I think I shall offer it in this form; but I do not wish to cut off any one from speaking now, or offering proposed amendments.

Mr. J. L. O'Brian — Referring to the proposition of what I may term legislative home rule, I desire to point out that these propositions fail to remove one of the serious causes of complaint on the part of the cities, because those propositions which merely intend that we shall delegate or shall authorize the Legislature to delegate these powers, leave the Legislature free to go on interfering arbitrarily with the powers of cities. Now, to grant cities a certain amount of power is only one side of the problem. The insistent demand of those who ask for home rule is that the other evil shall be cured and that the Legislature shall be prevented from arbitrarily interfering in the affairs of cities, and in that connection I desire to differ very emphatically with the statements which were made from his experience, by the delegate, Mr. Hinman, as not conforming to my own experience, for three years a member of the Cities Committee of the Assembly; that it was his opinion that the Legislature very rarely interfered, and especially was it his opinion, that practically all of the bills which came here for cities were with the approval of the local authorities. Now, gentlemen, if that is the case to-day, it is a very different condition from what it was six years ago when I was a member of this House, because in my opinion most of the interference that the cities complained of came about through bills offered by private members without official authority, and I can remember

the time in this House, not more than eight years ago, when the question was never asked in the Cities Committee, whether or not a bill had the support of the local authorities. And I want to differ also with those who believe that the pending proposal before this House would confer no measure of home rule.

Mr. R. B. Smith — Do you recall, during your service, how many bills were passed over the veto of the local authorities in this house?

Mr. J. L. O'Brian — There were not many.

Mr. R. B. Smith — No.

Mr. J. L. O'Brian — And the reason — I would like to state the reasons why the suspensive veto has been the measure of protection that it has. It is not because the Legislature has not desired to pass bills over the veto, but because the city bills were passed here late in the session and many of them never came back to the legislature, and I think the gentleman who asked the question will admit that to be a fact. I want to turn to another phase of the matter. I asked the delegate from Albany, Mr. Hinman, and I am sorry he is out, whether in his opinion the powers referred to in the so-called home rule bill of 1913 were not in the main powers affecting the local powers, affecting the property and affairs of the cities, and I understood him to say they were not. Now, it is my own opinion that if a court were called upon to construe the committee proposal just exactly as it stands to-day, without any amendment, the court would seek for a definition of what we mean by the expression "local," and the property and affairs of cities, leaving out the word "business" for the sake of argument. Now, in the grant of power which the Legislature attempted to make in 1913, to use those very words, every city is granted power to regulate, manage and control its property and local affairs, and then the bill sets forth 23 separate and distinct grants of power practically all of which in my opinion deal with the local affairs of cities. There may be a question as to three of them, namely, the grant of power to levy and collect taxes for municipal purposes; the power to grant franchises to use the streets; and one further grant which my eye does not light upon at this moment. Now the grants of power, the 23 grants of power, they may be subject to the general laws, and it is my opinion that the courts in endeavoring to arrive at the meaning of the Committee proposal would take the phrase "and the property and affairs of cities" and in that connection it would take into consideration the definition by the Legislature or implied definition by the Legislature of local powers as set forth in the bill of 1913. And I lastly — I don't know that I made myself clear on the question of the interpretation of this instrument. In giving my opinion, which was

quoted by Mr. Marshall, I gave my opinion as to the interpretation of the phraseology of the instrument. I do not wish to be understood as asserting that it is my view that the Committee should be so limited, on that I hold the contrary view. I simply gave my opinion, by which I still stand, as to the legal effect of the phraseology employed by the Committee.

Mr. Byrne — Mr. Marshall remarked that up to the time he spoke, there were three different opinions as to the meaning of certain words and phrases in this amendment. I am not at all surprised at that, when I consider the number of lawyers in this body. That they should have different opinions as to the interpretation of words is nothing new, and I assume that if we sat here for the rest of the season and devoted ourselves to nothing else but this argument, we could find some word or some phraseology about which people would differ as to their meaning. Now, Mr. Smith made a very good offer, but he reminded me of the man who when he heard that a friend of his, named Krausmeier had offered \$5,000 for the return of a dog, he said, "Why, he has not got it." The other man says: "I know he hasn't got it, but isn't it a good offer?" Mr. Smith says what he will do in the next Legislature. Well, if he constituted the whole Assembly and Senate, it was at least "a good offer." The great trouble is that he has not, as Senator Wagner said, that power, and I do not think that he will have it. Now, gentlemen, you are not going to send it over to the Legislature to make a home rule bill. You are expected to do it here, and you are expected to tell the Legislature what they shall do with regard to that bill. You are going to give certain powers to cities. Now, you have talked about many words here, for instance, the word "framework." That seems to disturb even General Wickersham. "Framework," to me, seems to mean the substantial, solid part of the structure — the framework of a house, the foundation, the beams, etc. — and the rest of it is the mere trimming that surrounds it. Don't you think that some member of the Supreme Court in the future — or, rather, wouldn't it be likely that he would be able to interpret what you meant by the word "framework?" Doesn't it apply to the very substance of the charter? Now, as to this word "government" as used on page 3, I think it is; in that place there is no intention to set forth the amount of grant to cities. That is not where it is done. It speaks of the government of cities and it defines what special laws shall be when related to the government of cities. The great question, to my mind, is this: How much home rule do you want to give to cities? Have you given them, in the opinion of a majority of the members of this Convention, the amount of home rule they should have? Of course they cannot have the amount of home

rule that is in the minds of some people. You are not going to separate the cities from the State. The State is going to maintain its sovereignty. But is this the kind of home rule you want to give? It seems to me it is about it. If it is, is it not only a question of changing the terms?

Mr. Low — Before offering this resolution, I would like to send up some verbal amendments that have occurred to me, one amendment being to provide for the possibility of submitting charter amendments in 1916 up to the fifteenth of February. I do not think they need to be read because they will follow in the same class as the others. I, therefore, offer now this resolution.

The Chairman — Does any delegate desire the amendments read?

Mr. C. Nicoll — I would like to offer some amendments of my own; I do not care to have those read.

Mr. Low — I hope any amendments which anyone desires to offer will be handed in now so that they may be covered by the resolution.

Mr. Rodenbeck — I think I will offer this amendment to section four, merely as a suggested rearrangement of the section for the benefit of the Committee.

The Chairman — Do you desire to have it read?

Mr. Rodenbeck — No, I do not care to have it read.

Mr. Weed — Mr. Chairman, there was an amendment offered by Mr. Sanders yesterday on the subject of initiation of amendments to the charter, which does not appear to have been printed on this sheet.

The Chairman — The Chair is informed that the Secretary has the amendment, and it will be printed with the others which have been introduced.

Mr. Marshall — I desire to offer the following amendments for the purpose of carrying out some of the suggestions made by me this afternoon.

The Chairman — Does the delegate desire them read?

Mr. Marshall — No.

Mr. Low — Mr. Chairman, I have been asked by different members of the Committee whether the Committee will be free to consider amendments that are not now presented. I suppose it will be, but, on the other hand, unless they are presented now, they will not be printed, so that the Convention will not be aware of them.

The Chairman — Does any delegate desire to offer a further amendment?

Mr. C. Nicoll — I have an amendment here that I would like to offer, if I may correct it later. The wording is not very clear. It is not very well written.

Mr. Latson—Mr. Chairman, I am hastening to write one short amendment, which I will hand up in a moment.

The Chairman—Mr. Latson offers the following amendment. Are there any further amendments to offer at this time? If not, the Secretary will read Mr. Low's resolution.

The Secretary—By Mr. Low. Resolved: That when the Committee rise, it report progress and recommend that the report be recommitted to the Committee on Cities, together with all proposed amendments and substitutes, with instructions to report back on Thursday morning, August 19th, at 10 a. m., and that the amendment retain its place on General Orders.

The Chairman—You have heard the resolution. All those in favor will say aye, opposed no. It is carried.

Mr. Wagner—I wanted to make a suggestion as to the phraseology of the resolution. You cannot send a report back to a Committee and also have it keep its place in General Orders. I suggest that when the report is again made on Thursday, it shall at once become a special order in the order of business of General Orders.

Mr. Wickersham—Mr. Chairman, I suggest that the proper disposition is that embodied in the Resolution, which is that the matter retain its place on General Orders. It may be that we will be engaged in some special order, and the Rules Committee can bring in a rule to cover it. I think it very desirable that we should not tie the hands of the Convention in its order of business further than is accomplished by this resolution.

The Chairman—The resolution has been passed. If any gentleman desires to move to reconsider the vote, that may be done.

Mr. Quigg—Mr. Chairman, I call for the regular order. The resolution has been passed.

Mr. Wagner—Mr. Chairman, I rise to a question of information. I desire to know—perhaps the delegate from Columbia can inform me—how it is possible for a bill to go to a Committee and at the same time hold its place on General Orders. How can it physically be in two places? If you say that it shall hold its general order number, that is quite a different thing. It cannot be in two places at the same time. That is the suggestion I make.

The Chairman—The understanding of the Chair is that the amendment will hold its general order number, but, under the ordinary rules of procedure, it cannot hold its place on the general orders calendar, and the situation will have to be covered by a special rule when the report of the Cities Committee is made.

Mr. Low—I may say, Mr. Chairman, with your permission, that I did propose at first to make it a special order for Thursday

morning, but, at the request of the leader, I changed it so as not to tie the hands of the Convention, as he suggested.

The Chairman — As the Chair has already stated, it is his understanding that the report will be recommitted to the Committee and come back Thursday morning, but the time of its consideration will have to be fixed by the Committee on Rules, if they desire to give it a special place. What is the further pleasure of the Committee?

Mr. Wickersham — I move that the Committee do now rise, report progress, and ask leave to sit again.

The Chairman — You have heard the motion. All those in favor will say aye, opposed no. Carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Austin — The Committee of the Whole has considered general order No. 50, the special order of the day, and various amendments thereto have been submitted. The Committee, through me, desires to report progress, and recommends that the bill be recommitted to the Committee on Cities, together with all amendments which have been offered thereto, and that the Committee on Cities be instructed to report back to the Convention not later than Thursday morning, August 19th, at 10 a. m.

Mr. Low — Mr. President, I think it was intended to refer not only to all amendments, but to all substitutes.

Mr. Austin — They were offered as amendments.

The President — Was there anything understood about keeping its place on general orders?

Mr. Austin — The Chair ruled that it would retain its general order number, but that its place would have to be determined by a rule of the Rules Committee.

The President — You have heard the report of the Committee of the Whole. All in favor of agreeing to the report of the Committee, to recommit this bill with amendments to the Committee on Cities, with instruction to report thereon Thursday morning, will say Aye, contrary No. The report is agreed to, and the bill is recommitted.

Mr. Low — Mr. President, I now offer a resolution that all the proposed amendments and substitutes not already printed be printed for the use of the Convention.

The President — All in favor of that resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, it is now twenty minutes past five, and the hour for taking recess is 5:30. There is a special order for this evening, and I suggest that it would be bet-

ter not to take up the next special order this afternoon. I therefore move that the Convention do now recess until 8:30 o'clock.

The President — All in favor of that motion will say Aye, contrary No. The motion is agreed to, and the Convention stands in recess until 8:30. Whereupon, at 5:20 p. m., the Convention took a recess until 8:30 p. m. of the same day.

AFTER RECESS—8:30 P. M.

The President — The Convention will come to order.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules makes the following report:

The Secretary — By Mr. J. L. O'Brian. The Committee on Rules recommends the adoption of the following: Resolved, That the following measures be made special orders and considered by the Convention in the order named: 1. General Orders 61, Judiciary, following General Order 38. 2. General Order 49, Charities. 3. General Order 27, Literacy Test. 4. General Order 47, Canals. Mr. J. L. O'Brian—I move the adoption of the resolution.

Mr. Brackett — Will the delegate from Erie, the Chairman of the Committee on Rules, permit a question before this is adopted?

Mr. J. L. O'Brian — Yes, sir.

Mr. Brackett — I would like to know about when we may expect that iniquity known as the short ballot to be considered?

Mr. J. L. O'Brian — Mr. President, I have no information on that subject at present. This is the order of special orders as thus far made out.

Mr. Brackett — The report of the Committee on Governor and Other State Officers came in ahead of the Judiciary report, didn't it?

Mr. J. L. O'Brian — Mr. President, I can only answer the gentleman's question as I have already stated it.

Mr. Brackett — Mr. President, may I inquire further of the Chairman of the Committee on Rules if he has heard anywhere a suggestion that it is wise to hold up making a special order of the report of the Committee on Governor and Other State Officers.

Mr. J. L. O'Brian — Mr. President, I have not.

Mr. Brackett — Does the Chairman know whether anybody else has heard that?

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — I submit the following resolution and ask unanimous consent for its immediate consideration.

The Secretary — By Mr. Wickersham.

Resolved, That 500 additional copies of the Report of the Judiciary Committee and the amended Article VI, reported by it, General Order No. 61, be printed for the use of the Convention.

Mr. Wickersham — Mr. President, there have been so many requests for copies of that article and I am told in the document room that the supply is running very low, so I have asked leave to have 500 more copies printed.

The President — Is there objection to the immediate consideration of the resolution? All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Low — I have discovered that part of the present Constitution was omitted from the Cities Committee report, No. 788, relating to section 10 of article VIII and I therefore ask that the Committee of the Whole be discharged from consideration of that amendment and that the proposal be amended, ordered reprinted as amended and recommitted to the Committee of the Whole.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to. The Convention will return to Committee of the Whole on General Order No. 25, Mr. Jesse Phillips will resume the Chair.

The Chairman — The Convention is now in Committee of the Whole on General Order No. 25.

Mr. Wickersham — When we were last in Committee of the Whole on this measure, Mr. Parsons made a motion to strike out the enacting clause. There is some question whether that motion is continued over to to-day, and, therefore, formally to have it on the record, I renew that motion to strike out the enacting clause, but I don't want to interrupt the progress of the debate.

The Chairman — The gentleman from New York, Mr. Wickersham, moves to amend by striking out the enacting clause. The amendment will be received at the desk.

Mr. Olcott — Because of the long discussion, sir, that has preceded what I have to say, I shall not add much either of scope or usefulness to the debate, I fear, but as one of the members of the Committee on Legislative Powers who voted for it I conceive it to be my duty to tersely express my conviction that it is both right and timely, and I ask you to excuse me on this occasion for sticking perhaps quite closely to my notes, because only by so doing can I be sure of including the things I want to say within the ten minutes time limit. I shall address myself solely to the first subdivision of the proposition, since from the beginning that has seemed to me to be not only the most important of the three, but the one most acutely needed. It provides, you will remember, that "the Legislature shall not pass any bill granting hereafter to a class

of individuals any privilege or immunity not granted equally to all members of the State." Why is not that timely and just, democratic and to the fullest proper extent humane? Or would you prefer the converse, which would read like this: "The Legislature may pass bills granting to classes of individuals privileges and immunities not granted equally to all members of the State"? Which seems more statesmanlike and more required? As a constitutional provision, is the former more in keeping with our declaration and our fundamental law? We began with the Declaration of Independence, containing what Lincoln called the "Proposition that all men are created equal." That proposition was successfully tested, first by the Revolution which followed as its instant result, and eighty years later by the Civil War, and both tests were successfully met. The Federal Constitution carried out the equality proposition declaring, as well the doctrine of non-entitlement to privileges as that against the abridgment of immunities. These propositions contained in the fourth and fourteenth articles, if I remember rightly, of the Federal Constitution, were interstate propositions; and I believe it is time for our State Constitutions to follow these leads by distinct prohibition against our Legislatures granting unequal privileges. I believe in this not for one reason, but for many.

First, it is to my mind not an academic proposition, but a practical one. We have had as many privileges and inequalities written in our statute books as they should be asked to hold; without direct authorization of the people. I am not sure whether the so-called "rich classes" have been more or less preferred than the labor element. It used to be — and well within my remembrance — that anyone advocating the doctrine of Mr. Barnes would have been hailed as a Democrat working for the masses or even a demagogue or agitator. He would have been praised by the masses as one working against privileges to the rich; for in those days so many special laws enfranchised the few with particular money-making privileges, and conferred upon voluntary aggregations of rich men, so many special corporate existences and powers, that there were scandal and wrong in that direction. Perhaps the masses have caught up in the matter of the enjoyment of privilege. At least it would seem so from the fact that the sharper cry against the proposition now being considered seems to come from the industrial workers. But of little importance whence comes the complaint. The only question to be met is as to whether it is justified. I believe that there have been enough legislative privileges extended to the rich on the one hand, to the poor on the other, and that hereafter when equality is sought to be subverted, for no matter how worthy a cause, the problem should be

solved in Democratic fashion by vote of the people themselves. Many propositions not strictly of equality I approve. I want laborers' compensation for occupational diseases; so that when a corporation shall have ruined a laborer's health by engaging him in an insanitary job — which yet is necessary for the production of things which are needed for the benefit of the community — he should be treated like the hero he is; and should be taken care of, and his family. I want the Spanish War Veterans preferred within proper testing limits in State employment; as a narrow meed of appreciation of our gratitude for the sacrifices made and ready to be made by those heroes whom public duty called to the front. I want a lot of other things which are included in the term "class privilege" — but I want none of them unless the appeal is strong enough to commend them to the direct vote of the people, whose vote can generally be relied upon to be right and righteous, and who will not refuse the deserving, whether they be of class or of mass. Furthermore, I appraise Mr. Barnes' proposition as for the relief of Legislatures, who ought not to have their vital deliberations impinged upon by the unequal demands of capital on the one hand or labor on the other, or of any other class of citizens. Lastly, I believe, whether statistics from Germany appear to prove it or not, that equal laws tend to the cultivation of independence and endeavor, to the encouragement of effort and economy, to the ennoblement of individualism and to the discouragement of mediocrity and of proletarian indulgences, in short to the improvement of the citizen and the State. And, Mr. Chairman, in consonance with what I opened my remarks by stating, I ask to have read by the Clerk, and I offer the following amendment:

The Secretary — By Mr. Olcott. To amend introductory No. 701, print No. 808, as follows: Page 1, line 6, strike out beginning with the word "providing", everything thereafter down to and including the word "employer", in line 11.

Mr. Unger — Mr. Chairman, I had thought that the limit of political audacity was reached when the Committee on Governor and Other State Kings issued its fiat against popular rule. I could not imagine then, sir, that a scant week thereafter, I would be in the throes of a great debate to ascertain whether or not social progress should be stagnated and the dead days of industrial slavery revived. I have no argument to offer in logic or theory against the scholarly address of the gentleman from Albany. But there is the humanitarian side of this question and all the logic and all the theory in the world cannot on the scales of civilization balance that. Mr. Chairman, apparently few of the members of this Convention have been to my city of New York

and made any extended survey of its works and of the labors that are going on within it, if this proposal of the Delegate from Albany can obtain serious consideration in this body. Of course I assume that there have been a number who have visited what is usually called the City of New York — the Great White Way; — but the real city is the great black way, where Hunger and Poverty and Misery work hand in hand with corporate greed and wealth and power, to injure the poor. I hope, Mr. Chairman, that the time will never come in this State when there can be enacted in our fundamental law this distrust of representative government which would prevent the representatives of the people from protecting these poor.

Mr. Hinman — Mr. Chairman, I hesitate to match my judgment in a matter so profound as this with the judgment of those who are older and whose judgment must be more mature than mine, such as Dr. Schurman, the President of Cornell, and Mr. Wickersham, the distinguished Chairman of the Judiciary Committee, but I must say that if I shared the view of Dr. Schurman with reference to representative government, I should feel that it were my duty to vote to wipe out the entire Constitution and to provide only for a Legislature and the Governor to make and execute the laws. He went on record a few days ago in favor of an executive budget because the Legislature could not be trusted with the money of the taxpayers and yet we are led to believe that the Legislature can be thoroughly trusted with the proposition of individual justice in these days when the consideration of the general welfare seems to be so popular except when one's own ox is gored. The distinguished chairman of the Judiciary Committee in his speech the other day called attention to a number of subjects which he said could not be dealt with by the Legislature if this provision were to be incorporated in our Constitution. He said: "The grant to certain persons of the franchise to be a corporation is a special privilege. Mr. Barnes' bill would prohibit such laws as that establishing the Altman Foundation." It has become quite common of late years to ask those special corporate franchises, such as the Altman Foundation. Now I have no objection to the carrying on of some great philanthropic, scientific or educational work by some such foundation, but these statutes are being sought year after year and I see absolutely no reason why we should not provide a general corporation statute to which all of these persons might accommodate themselves. There is absolutely no reason why we should not have another Altman Foundation in the future under a general law.

Mr. Wickersham says: "Exemption from jury duty has been held to be a privilege which may be granted to a class or classes

which thereby enjoy privileges and immunities not shared by others but which have been held to be within legislative discretion." Every session we have been asked by some group or other, and some of them persistently, year after year, for this exemption from jury duty. It is destroying our whole system of jury service by indirection and general emasculation. What we should do is to wipe out all jury exemptions rather than to try to build up the National Guard and the volunteer fire departments and other excellent instruments of a public character at the expense of the jury system. We have already gone on record as against special claim bills in the Legislature and we have provided so far by the Committee of the Whole that hereafter the Legislature shall provide a general law for the submission to the Court of Claims of matters for their hearing and determination. Year after year we have had special escheat measures asked for. Why should we not have a general statute which should provide the procedure whereby these matters may be presented to the Court of Claims and defended by the Attorney-General in a judicial proceeding. Is there any reason why we should handle them incidentally in the Legislature and not in a judicial proceeding?

Preference in the civil service is being continually asked for by various groups of citizens as a reward for faithful service of some other public character. We have no right to load the civil service at the expense of some other branch of the service as a reward for anybody, whether for partisan service or for public service. I favor a merit system, but it should be the merit of capacity to fill the position occupied or sought to be occupied and not as a privilege for having rendered some other service in no wise related to the office in question. It breeds contempt for discipline and authority. It is not helpful in maintaining efficient government. It is wrong as a matter of policy to sacrifice one branch of the public service for the benefit of another. It is wrong to encourage the idea that the privilege or immunity is the reward for patriotic service. Patriotic service should not be measured by the vulgar measure of the materialistic advantage sought to be gained. Every year we have all sorts of pension schemes advanced in the Legislature and, as amply demonstrated by the programme that was laid on the table the other night by Mr. Parsons, we are but touching the hem of the garment — not self-supporting schemes in which thrift is encouraged by statute but in which and through which the people are being led to believe more and more that the treasury of the State and the treasuries of its municipalities are a reservoir to be tapped *ad libitum*. I would be the first one to provide relief for suffering wherever found, whether it be for old age or invalidism or misfortune of

any character. But when the younger generation realizes that when a certain age limit is reached, the fear of old age and poverty, which is and should be the great stimulant for thrift, has been taken away, the best prop of character, self-reliance and American pride — as Judge Clearwater said — has been knocked out from under. Privilege of this kind is destructive of the greatest stimulant for thrift.

The latest pension scheme was the widow's pension which became a law this year, against my earnest opposition. I was surprised when Judge Hale stated that that was not really a pension scheme, that it was simply carrying on our ordinary method of poor relief. I maintain that such a payment of moneys to the widow as she sees fit to spend it, not through institutional care, not by providing food when it is needed, not by providing clothing when it is needed, or fuel when it is needed, but moneys to be expended as she sees fit, is a distinct departure in matters of public relief. If you meet a man upon the street and he says he is hungry and has not had anything for several days and asks for a quarter, if you are wise you will take him to a restaurant and see that he gets food. You will not give him money because the experience has been that nine times out of ten that man will go and buy a drink with it. I say this is a distinct departure in matters of public relief. It should continue to be undesirable to be a pauper and a dependent. Such a person should never be permitted to have the sting of dependency softened to the extent of being placed upon the payroll of the state as a reward for not having been provident or as an easy substitute for working out his own salvation in fear and trembling. It breeds pauperism, it discourages thrift, it creates the habit of dependence, it is demoralizing to the rising generation and utterly destructive of strong and virile character. In passing the widows' pension bill this year we have taken the first step toward the denial of the birth-right of American citizens, the birth-right of self-reliance, of individual dependence, of individual character and resourcefulness, and of responsibility to and for our own upbuilding. This convention has the opportunity to teach the citizens of this state what should be the sterling principles of American character, never to lean upon the government for aid, for what you can obtain through your own strong right arm. The thrift of this nation is the strength of its individual citizens. When you say that the widows' pension is in the interest of the child because that child is to be brought up by its mother, I say to you is that child to be brought up by a mother who is taught by the passage of such legislation as this, who is taught by unearned moneys that are handed to her, that "there is really no use in this world

for being thrifty or self-reliant. The government owes you a living. If destitute at any future period of your life, do not worry!" They have taken care of the widow; they are going to take care of those whose husbands have deserted them, of those whose husbands are in prisons; of those whose husband are in insane asylums of those whose husbands are confirmed invalids. They are going to take care of the families of all those men and then we are going to have old age pensions, just as in England, where a million pensioners are upon the pay-rolls and where it is costing them annually sixty million dollars. That is not the important point. We are not going to do it as a proposition of relieving destitution in order that there may be no suffering in the world but we are going to place them upon the payroll of the state. What will be the condition of mind of the recipient of such moneys and those who witness it and those in the community who are aware that it is going on, where no service is rendered, who are led to believe that dependency is not unbearable, but is even self-respecting if not desirable; that there is no need of life insurance, no need of health insurance, no need of accident insurance, no need of laying any money away in the savings bank for a rainy day, that day when we are going to be ill? "Let us eat, drink and be merry, for the government will take care of us. The world owes us a living." Are we going to breed poverty and crime which will continue in the future? When are the people going to cease to have this appetite, this unquenchable thirst for governmental aid? Who is it that is appealing to the baser passions of human character? Is it the opponents of special privilege legislation or is it those who favor privilege to satisfy their own feelings of personal comfort, to meet their own materialistic comfort at the expense of some one else? Who is it that is appealing to the finest sensibilities? Is it those who raise the cry of humanitarianism and see but the surface of things deplorable which under their treatment is going to grow worse instead of better, or is it those who really appeal to the highest sense in the mind and in the heart and in the will of our people in that they stand for the development and character of the individual, which is the keystone of our structure?

Mr. Green — Mr. Chairman and Gentlemen of the Convention: Studies from Genesis to Revelations have been indulged in by those favoring this proposed amendment, to make immaculate the "damned spot" which will not "out" on the black page of history, while the dry tears of fear have been copiously shed lest without this one and only combined beacon light and lustrous guiding star of hope, the day of democratic liberty, independence, equality and civilization would pale and perish from the earth.

The proponents of this amendment have evidently sought, by the ingenious employment of scholastic word-pictures, principally replicas of painting by the older masters of ancient days and foreign climes; by carefully prepared papers — in their style and composition literary gems approaching the classical — to so divert the attention of the Delegates to this Convention that they would forget the warning of the Great Master: "Woe unto you * * * for ye shall clean the outside of the cup and of the platter, but within they are full of extortion and excess." "Woe unto you * * * for ye pay tithe of mint and anise and cummin, and have omitted the weightier matters of the law, judgment, mercy and faith: these ought ye to have done, and not to leave the other undone." The artistic touch in phraseology coupling the historic with the prophetic, holds out a promise to the unwary, reminding one of Kipling's "L'Envoie" wherein he states:

"And those that were good shall be happy,
They shall sit in a golden chair;
They shall splash at a ten-league canvas
With brushes of comet's hair."

Dr. Barnes and his numerous staff of expert specialists on legislative powers have prescribed this proposed amendment as "first aid" to humanitarianism, a complete antidote for Socialistic disorders and a sure panacea for all ingrown ills of a republican form of government. Despite all the veneering by the genius of a literatus, and the adept's eloquence in forensic generalities, this amendment, when subjected to the light of reason and the pure air of deliberate analysis, smells to heaven, as the putrid remains of a barbaric antiquity, which the rules of "safety first" and healthful logic demand should be quickly and deeply interred with all similar species of cold, heartless, money-mad attacks of selfish individualism upon the life of sane and progressive constitutionalism and humanitarianism. Mr. Chairman and Gentlemen of the Convention, I trust you have carefully and thoughtfully read and pondered this composite production which has so long been in process of incubation and evolution, having been introduced May 26th last, and the finality of artistic touches to frame and canvas leaves the picture complete, to date, now before us. What does this amendment mean? Can anyone tell? I confess it is bewildering to a common, every-day ordinary layman like myself, who listened attentively with an open mind to the "mock trial" when this case was called on Thursday last and "pros" and "cons" were presented by eminent men, members and ex-members of the New York State Bar and Bench, during a long day and night of what I trust was sincere argument and honest debate. Judges, wholly without jurisdiction, constituted the court and

decided with rare judicial poise for and against the case at bar. The verdict of the comparatively small jury of laymen seemed to be that the question of fact had failed of presentation, and the impotency of the Court to interpret the meaning of the language into law was sufficient to non-suit the petitioner. As the brainstorms subsided and the fog of pettifog was dispelled by the sun rays of candor and common sense, the disquieting thought arose: What if this Convention should approve the proposed amendment and the people this fall, or — following the ingenious but cowardly proposal to defer until 1917, and thus escape the Presidential election — should confirm and write the amendment into Constitutional law? Suppose then, a real bona fide trial should be brought to determine, finally, the meaning of all these words, and equally qualified lawyers should be arranged on opposite sides before a court of competent jurisdiction which should finally hand down its decision — how would it read? Of course, the first decision would not satisfy the party aggrieved, and, naturally, the case would be appealed, and then again appealed, covering, in the usual slow course of law many months or even years of time, to reach the finis. Meanwhile, justice and humanity might suffer and die to appease what — a bid for notoriety? or a chance to strangle social justice and human welfare laws on the altar of selfish greed and privileged, material interests? Who asked for this Proposed Amendment? What are the interests behind it? We know that the social, religious, educational, charitable, fraternal interests, labor organizations, The Anti-Saloon League of New York, The Civic League of New York, and all other societies, intended to conserve the welfare of the people, so far as heard from, are in direct opposition and ask that the amendment shall not receive favorable consideration by this Convention.

We are told by the proponents that there is no thought of interfering with human charities, individual rights or things that are good for man, society or State! Then why this Proposed Amendment? And who knows its final interpretation. What would the amendment mean after the courts had thoroughly dissected it and given full force to the "Thou Shalt Not" clause which it purposes to write into the basic law of the State? Suppose the Legislature was prohibited — bound hand and foot — for twenty years, or until another Constitutional Convention could be convened, after breaking through the worse than "barbed-wire entanglements" introduced, providing for a vote by the people on Constitutional change only once in ten years, or, as reported by Mr. Hinman's Committee, that at least a vote two-thirds as great as cast for a Member of Assembly must be had before a Constitutional Amendment can become a law; and if anyone disputes

the legality of the vote, he may appeal to the court for a final determination. In the meantime, suppose, in the line of medicine or surgery — outside of those now recognized by statute — should come into being another and more modern class excelling the present schools, and they could not practice without lawful recognition; would that be fair to the profession or to the people?

Similar hypothetical suggestions might be applied to other professions and callings requiring license or lawful statute in order to permit them to compete with others of their class already legalized to do business. This kind of constitutional law would surely be pleasant to the “ins” who are protected, but what about the “outs” and what becomes of “fair play” and “equal rights” not to mention privileges? In parts of China and in India, equality in the abstract is in operation to-day. A short time ago a large steamer burned on a Chinese river; there were Chinese fishermen in their boats alongside; they made no effort to rescue the perishing and care for the dying, and were not expected to, because manhood equality prevailed there, and — they were fishing for fish, not men. In India, if even a high-caste Brahmin drops seriously ill in the road, no one will pick him up — not even a fellow Brahmin — because no man acknowledges an obligation to another. Selfish individualism controls there. They walk away on the other side; the good Samaritan has not begun his work. In the United States equality as an abstract proposition was put out of business at the building of the first school-house, hospital, asylums, for the poor, insane, etc. Oh, no; this amendment would not “carry into effect the real American ideal” — they would kill it! — for the American ideal goes far beyond proposing “that the government should give equal opportunity and equal protection to every individual and by doing this every man’s success or failure will depend upon himself.” True “the American ideal” in part is “that the Government should give equal protection to all and special privileges to none” i. e., the withholding of such protection or privileges as would permit a man or set of men, because of their political, moneyed or other power, to exploit or take undue advantage of their fellow men.

The “American ideal” goes to humanity with faith, hope and charity; comprehends social justice; realizes that it is the duty and should be the proud privilege of government to so adjust its activities that the teachings of the lowly Nazarene concerning the Brotherhood of Man should be embalmed in our hearts, our statutes, and in the constitutions governing States and nations. Permit me to read you a letter received from one of my dearly esteemed friends — a gentleman who always squares his promises by performances — and who, I believe, in proportion to his financial ability is unostentatiously and quietly giving to the

unfortunate and deserving regardless of class, color or creed as much in practical charity as any man living. As you will notice from the date, this letter was not intended to fit in here so nicely.

“Office of

“Endicott, Johnson & Co.,

“Endicott, N. Y.

“May 26th, 1915.

“Executive Department.

“George E. Greene, Constitutional Convention, Albany, N. Y.:

“Dear George:—

“In the morning paper, there appear proposals for possible future ‘Labor legislation’ which calls for more and better protection for the ‘lives, health, safety, comfort and general welfare,’ of all working people, for better insurance against accident, and sickness; for insurance against unemployment; and finally, insurance against the needs of old age. In a broad way, I should urge all measures of this kind to favorable consideration. Society owes it to its members, that none should suffer for what they actually need, while any have more than they need, and that no member of society should face inevitable old age, with fear and trembling, lest they might suffer for food, clothing and shelter. In brief, society owes it to every member, that in the midst of plenty there should be plenty; not in the sense that plenty should be given to those who, without effort, would take advantage; but that none should suffer for absolute necessities. I believe we are away behind some other countries, in our care for workers, who have not been able—through lack of opportunity (or for some other reason) to provide against unemployment, sickness, old age, etc.

“I believe in very liberal labor legislation. In some way or other, we have to take care of our less fortunate members. It should be cheerfully done, and in reason liberally, because it is a privilege to do it. I observe that the support of every unfortunate out of work, or out of health, becomes a tax upon the community. It is just as well that provision should be made for their certain and comfortable maintenance, as to have it, as it is to-day, when everything is uncertain and misunderstood, and the mental distress is sometimes greater than the actual physical distress, because of the fear that they going to suffer.

“I would like to have you believe that there are employers of labor, who would sustain you, and your co-workers, in any effort which honestly sought a solution of the present unsatisfactory condition of the producers of all growth and prosperity—the working people.

“Yours very truly,

“(Signed) George E. Johnson.”

The Chairman — The gentleman's time has expired.

Mr. Green — It is my deliberate opinion that in this letter Mr. Johnson voices the sentiment of those associated with him as co-officials and stockholders of this great firm of shoe manufacturers who employ about 7,000 people in my county and he speaks for many other concerns in the State of New York of like character.

Mr. Sheehan — Those who have opposed this measure in its entirety all seem to have overlooked or ignored the fact that it has within it the germs of a political philosophy that will never die while true republics exist. It is doubtful if a republican form of government can long endure if its fundamental law justifies the grant of privilege or immunity to any class of persons not common to all. No firm believer in representative government will ever abandon the principle that all men are equal before the law and that special privilege should be granted to none. Those who believe that a pure democracy and not a representative republic is the goal for which we should struggle, are consciously or unconsciously striving for the power to grant or withhold privilege and immunity. An examination of the history of our country will show that from our earliest days the struggle for privilege has been constant and persistent and in innumerable cases successful. Legislative privileges have been granted that have enriched the few and outraged the many. The word "privilege" with all its sinister meaning still looms large in the statute books of our State. The blacklist legislative and administrative scandals of the State are directly traceable to the struggle for privilege. The scandals of the early seventies which resulted in the coinage of the hateful term "Tweedism" had root and birth in the struggle for special privilege. Had the first paragraph of this proposal been written into the Constitution of 1846 some of the most flagrant wrongs which have ripened into legal rights would never have been enacted. Special privileges which permitted a favored few to occupy the highways of the State and to receive immunity from taxation upon their property would not be a subject of reproach and condemnation for they never could have been granted. Had such a provision as this been inserted in the Federal Constitution many of the evils from which the body politic now suffers would have been avoided. Millions of acres of fertile soil would have been reserved for individual settlement and would not have been bestowed as corporate subsidies. Under this provision it would have been impossible to pass a valid law permitting one class of citizens to violate the anti-trust laws of the nation while other classes were made criminally liable for infractions of the same law. The wrath of the nation has turned against the political boss largely because of the belief that special privilege was the

direct result of so-called invisible government. And here we have a so-called political boss responding magnificently to his ideals of justice and equality, fathering a measure that represents all the public has been taught to believe he did not believe in. The adoption of the first paragraph of this proposal will remove one of the greatest causes of popular discontent and it will further remove from those, who think in the language of sin, the opportunity of haranguing the multitude that privileges are denied them which are granted to others.

It is no excuse for granting privilege to the masses that privileges have been heretofore exercised by the classes, for special privilege is equally obnoxious whether it be granted to the few or to the many. How can those who disclaim against the privileges heretofore granted to the few hold straight faces when they oppose a proposal that will deny privilege to any? Privilege has been the blight of all ages and you cannot consecrate it or make it respectable by saying that privilege ceases to be privilege because it is given to the masses and denied to the classes. I come from a race that has suffered as much through the grant of governmental privilege as it has from the iron hand of tyranny. To me the term itself is odious. The natural rebel within me cries out for its destruction, and I should vote for this paragraph if I stood alone in this Convention. But, Mr. Chairman, I cannot give my approval to the second paragraph of this proposal because I fear it might limit or take away from the State the power to provide for the care and support of its poor and indigent. Governmental paternalism is as offensive to me as is privilege, but the practices and traditions of our ancestors in recognizing a duty to care for those who are unable to care for themselves are in accord with the best instincts of human nature. I would not deny to the Legislature the power to deal with this question in an enlightened and humane manner, but I should not expect that this power would be used in such a way as to encourage the belief that the State as such owes a living to any man who comes within its borders. The third paragraph providing that the Legislature shall not establish a wage for service to be paid to any employee by private employers is right in principle, but, in my opinion, is too broad in expression. While I believe the death-knell of our institutions will be sounded whenever power is conferred upon the Legislatures of our different States to fix the wage that private employers shall pay to their employees, I believe an exception to the principle can be justified in favor of women and children of tender age. I cannot conceive of a single valid reason that can be advanced in favor of the proposition that public authorities should fix the wage to be paid by private employers, but I believe it would not be

inconsistent with our form of government to protect the morality of our girls, when that morality is threatened by the sordidness and greed of those who would deny them a living wage, and because that right might be interfered with under the third proposition, as it stands, I am against it. Mr. Chairman, we know not what new world conditions may result from the bloody carnage we are now witnessing beyond the seas. New functions of government may be forced upon us. We may possibly have to wander somewhat from the pathways of the past, but I cannot conceive of any possible result which will make for the glorification of privilege,—on the contrary, I can see that special privilege and its twin brother, despotic power, may disappear from the face of the earth forever.

In the few minutes allowed me to discuss this matter under the rules governing this debate I have attempted to state as concisely as possible some of the reasons why I favor the adoption of the first paragraph and oppose the approval of the last two paragraphs of the proposed amendment. I hope this measure will be advanced to third reading in order that there may be a recorded vote for or against the proposition contained in the first paragraph of Mr. Barnes' amendment.

Mr. Low—Mr. Chairman, I listened the other day to the address of the gentleman from Albany in introducing this amendment with profound interest and with great admiration. With profound interest because of the cogency with which the thought was developed, and with admiration for the sincerity of the man who urged it upon the attention of this Convention. If we were to debate in the abstract the first paragraph of this amendment, I should be very sorry to attempt to sustain the proposition that our State should give privileges to one class that it does not give to all citizens. But I can interpret the significance of the amendment only by what was said by its author when he called attention to the series of social measures which were adopted in Germany at the instance of Prince Bismarck. Now, my thought about those measures, Mr. Chairman, and my view upon this amendment is determined by my belief that in no true sense are they the grant of privilege to a class. I have been the president of the National Civic Federation for more than five years. That organization is made up of leading employers, leading representatives of organized labor, and men like myself who are not either one or the other. In 1908, under the auspices of that Convention, the first meeting, the first great meeting was held in this country, in the interest of workmen's compensation laws, and why? Because in discussing the questions of accidents and the burdens

that fell from accidents under modern industrial conditions upon the workmen, not simply the representatives of organized labor, but the representatives of employers and the representatives of the public, had come to feel that the Employers' Liability Law, the system which that represented, no longer worked justice; so that the law, instead of being, in the beautiful phrase of the Judicious Hooker "the harmony of the world" had become the discord of human society; and this measure for workmen's compensation, which gives something to all who are hurt, instead of perhaps abnormal damages to few and nothing to many, in no sense is a class privilege, I submit, but it is a measure in the profoundest interest of the community as a whole. Now, a word or two about mothers' pensions. I lived in Brooklyn in the years 1870 to 1880 and there were then great abuses in the granting of outdoor relief. A suit was brought in the Supreme Court as the result of which it was decided that it was not lawful in the State of New York to give money for outdoor relief, except to persons who, when they were able, should be taken to institutions to be cared for there. Up to that time Kings county had been spending more than a hundred thousand dollars a year for outdoor relief, and it was cut off abruptly. I expected and many others expected that that would be followed by tremendous claims upon the relief societies of the city the following winter, but what happened? That change chanced to take place in 1878, and it went into force on the first of January, 1879, just preceding a year of great business prosperity, which somewhat reduced, no doubt, the demands upon relief societies, but, sir, if you will look up the record concerning the commitment of orphans, and half-orphans, as a result of that change, you will find that the sending of children to orphan asylums, taking them out of their homes and away from their mothers, widows or not, to be cared for by the State, followed with marked increase the adoption of that policy. Therefore, I look upon this action in favor of widows' pensions precisely as Judge Hale does. It seems to me that it is only one way whereby society is trying to deal with a problem which is as old as society, and I hope that it will prove to be a wise step.

Mr. Wickersham — A point of order.

The Chairman — The gentleman will state his point of order.

Mr. Wickersham — Under the order of business for the evening the ten minutes speeches were to end at the expiration of one hour, and the remaining time was to be divided between the opponents of the measures and the advocates of it. I believe the first hour has expired.

The Chairman — As the Chair catches the time from the clock there are two minutes left.

Mr. Wickersham — I withdraw my point then.

Mr. Low — I have no desire to continue my discussion, although I might cover every phase of the subject. My point is, that such legislation as that is in no sense a grant of privilege to a class. It is legislation which is after all in the interest of the whole.

The Chairman — Now, under the rule heretofore adopted by the Convention, after 9:30, the time was to be equally divided between the opponents of the measure and those who favored the measure and of course the Chairman is powerless to do anything except to enforce the rule. So that from now on, unless there is some other action taken the time must be equally divided between those opposing the measure and those supporting the measure.

Mr. Dahm — Mr. Chairman, I rise to a question of information.

The Chairman — The gentleman will state his question of information.

Mr. Dahm — How many speakers has the Chairman got on his list who desire to speak on this question?

The Chairman — I have here on this list before me nine of the members who have indicated a desire to speak.

Mr. Dahm — Mr. Chairman, in view of that fact I would move that we suspend the rule until all the speakers have a chance to express their views on this question.

Mr. Wickersham — Mr. Chairman, if that is urged, I raise the point of order that the motion is not open for discussion in this Committee.

The Chairman — The point of order is well taken. The Convention only can suspend its rules and not the Committee of the Whole.

Mr. Wickersham — Mr. Chairman, Mr. Barnes and I have arranged to divide the time and he will take the last half hour.

Mr. Barnes — Mr. Chairman, I understand that, but I would suggest to Mr. Dahm that as a matter of procedure if he desires and the Committee desire to have further discussion the motion is for the Committee to rise and report progress and ask leave to sit for an hour or whatever time is necessary, and then to come back and that motion, I think, would be in order.

Mr. Dahm — Mr. Chairman, with all due respect to the suggestion of the distinguished gentleman from Albany, there seems to be a privilege which permeates this audience; there seems to be a desire to shut off debate on this question. I have something to say, and I have sat here for the last three days and I was forced to give way to the privileged few and their representatives and even including organized and unorganized labor, and I think the suggestion is important —

The Chairman — The Chairman of your Committee will state

that he cannot do anything except to enforce the rule which has been adopted by the members of the Convention, and the Chair further states that he has tried at least to divide the time equally amongst those who advocate and amongst those who oppose the measure.

Mr. Barnes — I rise to a question of privilege.

The Chairman — The gentleman will state the question of privilege.

Mr. Barnes — Which, I take it, is recognized in this body at least. The reason why I did not make the motion to rise and report progress and ask leave to sit again under another rule is because I am a member of the Committee on Rules and I have been endeavoring not to take up any more of the time of the Convention than is necessary with this proposal and it is farthest from my mind in any way whatsoever to limit the debate. As to other members who desire to speak, I trust the debate will continue until every member of the Convention has stated his position clearly as to whether he is in favor of granting privilege to a few not granted to every member of the State, and then those who are opposed to it, ought to be permitted to speak, provided we do not take too much time, and I do not like to make the motion for that reason.

Mr. Dahm — Mr. Chairman, with all due respect to the gentleman, I will make the motion myself. I ask the Committee do now rise.

The Chairman — The gentleman from New York, Mr. Dahm, moves that the Committee do now rise, report progress and ask leave to sit again.

Mr. Wickersham — Mr. Chairman, I do not think anyone would object to this debate being continued under such an order if it is the desire of the Convention to do so. I would observe, however, that we have already devoted two sessions to this matter, and this is the third session, and we have a great volume of other business before this Convention, and it does seem to me that we have given about as much time as this particular measure in that proportion properly should have, and having stated that, I submit the motion to the Committee.

The Chairman — The question is upon the motion by Mr. Dahm.

Mr. Dahm — Mr. Chairman, I want to say in reply to the previous speaker that there is no question that has yet come before this Convention of more importance to the State of New York than the present one under discussion, and I sincerely hope that the members when they vote on this question will vote to arise and report progress.

The Chairman — The question is upon the motion of the gentleman from New York, Mr. Dahm, that the Committee do now rise, report progress and ask leave to sit again.

Mr. A. E. Smith — Do I understand that is to sit later to-night?

The Chairman — Yes. Those in favor of the motion will rise. It seems hardly necessary to waste time counting. Those opposed rise. The motion has been carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Phillips — The Committee of the Whole having under consideration General Order No. 25, has directed me, as its Chairman, to report that it has made progress and ask leave to sit again immediately.

The President — The question is on the request to grant leave to sit again immediately. All in favor say Aye, contrary, No. The motion is agreed to.

Mr. Wickersham — I move that in the further consideration of the subject when the Committee resumes its session the time for debate be limited until half-past eleven. That the last hour be divided between those opposed to the measure and those in favor of it in like manner as the standing rule, and that the intervening hour be divided among the speakers, no one to speak more than ten minutes.

The President — All in favor of the motion say Aye, contrary No. The motion is agreed to.

Mr. Wickersham — Mr. President, I move that the Convention now go into Committee of the Whole for further consideration of the measure.

The President — You have heard the motion. All in favor say Aye, contrary No. The Convention will go into Committee of the Whole, with Mr. Phillips in the Chair.

The Chairman — The gentleman from Wayne, Mr. Betts. I desire now to announce that under the rule which has just been adopted, the forty or forty-five minutes will be devoted to general discussion, and then, as I understand it, the last hour is to be divided equally between the opponents and the proponents of the measure.

Mr. Betts — Mr. Chairman. This is one of the vital fundamental propositions before this Convention, for it relates exclusively to the administration of justice. The proposition presented by Mr. Barnes as it is to be amended reads: "The Legislature shall not pass any bill: Granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State." The questions involved are: 1. Shall we put in operation the American ideal of government which is justice to

all and privileges and immunities to all alike? 2. Shall we depart from this ideal of justice and equality by establishing as a governmental principle inequality of privileges and immunities by giving them to a certain class while denying them to all other classes with the consequent injustice to every member of the State not included in the favored class? 3. If we are to establish inequality of privileges and immunities as a fundamental principle of government, then this proposition provides that this important and fundamental principle shall be incorporated in the Constitution of the State by the sovereign people themselves, in whom all power resides, instead of leaving it to the Legislature, which is simply a delegated agency not authorized or empowered to decide fundamental principles of government. This is the true situation and no amount of sophistry can either cloud or hide the issue. Aristotle, the founder of political science and the compiler of 150 constitutions, laid down the principle upon which all civilized states should be administered. He said: "Justice is the bond of men in states, and the administration of justice, which is the determination of what is just, is the principle of order in political society." In this statement the great philosopher clearly indicates that order follows justice and that disorder follows injustice. In this he is absolutely right. Every democratic state, if it expects to endure, must enforce justice between all of its members. When the State begins to grant privileges and immunities to one class which it denies to all other classes it sows the seeds of its own ruin and invites revolution by removing from its administration the principle of justice and by establishing injustice as a part of the administrative policy. It is this injustice of granting privileges and immunities to some and denying them to others that creates discontent. Those who are denied equal privileges and immunities are dissatisfied because the State imposes upon them the injustice of carrying a new burden to the extent that the favored class is relieved. But this is not all. Those who are enjoying the privileges and immunities, having had a taste, at the expense of others, constantly want more. Their appetite grows by what it feeds on. They organize, agitate and demand more favors, privileges and immunities, and they fight to obtain them at the hands of the Legislature. When they do not secure the additional privileges and immunities they seek, they are still more dissatisfied and discontented; and, if they do receive them, they are dissatisfied because they did not get more and immediately start a new agitation for another increase of privileges. Therefore, the State is responsible for the whole situation and discontent is created by the mistaken policy of the State itself because it does not confine its activities to its legitimate function — the administration of justice. The administration of justice means that the State should

give equal protection and equal opportunity to every individual and then his success or failure will depend upon himself and not upon the government. The government can not undertake to insure success to any individual. If it does, it should insure success to all alike. To undertake this would mean the absolute destruction of all organized government and would result in chaos and anarchy, and in the end to bloody revolution. This is exactly where all the class legislation is leading us. It is leading us to revolution. It is leading us backward and not forward. It is reaction and not progress.

When the State secures the support of any class by the bribe of favor, privilege or immunity and the self-seeking demagogues purchase their support with flattery and by aiding them to secure governmental privilege, then the Republic is on the edge of chaos and anarchy lurks just around the corner. I deny that those who advocate socialistic class legislation are progressives. They are reactionaries. They are carrying us back to the intolerable conditions from which we emerged more than a century ago, after an age-long struggle for political liberty and industrial freedom. For the purpose of proving this statement, I shall present to you some historical facts that are beyond the realm of dispute. All of these schemes of legislation and government have been tried out in past history and have, invariably, not only proved failures but have resulted in injury to the very class of people they were intended to benefit. Let me give you a few historical facts on the subject. In the year of our Lord 301 — 1,600 years ago, Diocletian, Emperor of Rome, the original Progressive, was confronted with the same problems which confront us to-day. The high cost of living, the minimum and maximum wage and the "greed of the malefactors of great wealth" were issues in that ancient day. Diocletian met the situation like a reactionary Progressive of our own day would meet it if he had the power. He issued a decree or an edict fixing the minimum and maximum wage for all labor and the minimum and maximum price on all commodities, including both the necessities and the luxuries of life. This original Progressive, Diocletian, who reigned 1,600 years ago, was fired with the same zeal for social justice and uttered the same eloquent and burning words with which our ears have become so familiar in these days. In his decree, fixing the prices on commodities and labor, among other things he said: "But inasmuch as there is only seen a mad desire, without control, to pay no heed to the needs of the many, it seems good to us, as we look into the future, to us who are the fathers of the people, that justice intervene to settle matters impartially, in order that that which, long hoped for, humanity itself could not bring about may be secured for the common government of all by the remedies which our care affords.

Who is of so hardened a heart and so untouched by a feeling for humanity that he can be unaware, nay that he has not noticed, that in the sale of wares which are exchanged in the market, or dealt with in the daily business of the cities, an exorbitant tendency in prices spread to such an extent that the unbridled desire of plundering is held in check neither by abundance nor by seasons of plenty." The author of this book, which I hold in my hand, entitled "The Common People of Ancient Rome," by Professor Frank Frost Abbott of Princeton University, after quoting the above extract from Diocletian's decree, says: "If we did not know that this was found on tablets sixteen centuries old, we might think that we were reading a newspaper diatribe against the cold-storage plant or the beef trust." It will be interesting in order to give you an idea of the extent of this Progressive's program of paternalism, to quote a few of the prices fixed by the Emperor in the interest of social justice. They ranged all the way from wine to water-cress, and from mustard to millet. I quote:

Barley, per bushel, 74.5 cents; rye, per bushel, 45 cents; millet, ground, 74.5 cents; millet, whole, 37 cents; beans, 74.5 cents; oats, 22.5 cents; mustard, \$1.12; prepared mustard, per quart, 9 cents; wine from Tibur, per quart, 22 cents; wine from country, 6 cents; honey, best, 30.3 cents; honey, second quality, 15 cents; pork, per pound, 7.3 cents; beef, per pound, 4.9 cents; pig's liver, 9.8 cents; 1 goose, artificially fed, 87 cents; 1 goose, not artificially fed, 43 cents; butter, per pound, 9.8 cents; dry cheese, 7.3 cents; sardines, 9.7 cents; artichokes, bunch of five, 4.3 cents; water-cress, bunch of 20, 4.3 cents; eggs (4), 1.7 cents; snails, large (20), 1.7 cents; cucumbers (10), 1.7 cents; sheep's milk, per quart, 6 cents.

These are only a few of the articles upon which this Progressive fixed the prices.

Now, we come to the wage question. The price per day quoted includes the keep of the laborer:

Manual labor, 10.8 cents; bricklayer, 21.6 cents; carpenter, 21.6 cents; marble worker, 26 cents; lime burner, 21.6 cents; stone mason, 21.6 cents; wall painter, 32.4 cents; baker, 21.6 cents; ship builder, for sea going ships, 26 cents; ship builder, for river boats, 21 cents; employees to watch children, per child, per month, 21.6 cents; sheep shearers, per sheep, 9 cents; driver for camel, ass or mule, 10.8 cents.

Then follow prices on every conceivable kind of labor, all of which I have here before me, but have not time to read. Now, what was the result of this experiment? It killed enterprise, paralyzed industry and stopped production. Prices soared higher and higher; the people began to starve and riots and bloodshed were the order of the day. Let the historian tell the story:

Lactantius says: "And while he (Diocletian) had brought on a state of exceeding high prices by his different acts of injustice, he tried to fix by law the price of articles offered for sale. Thereupon, for the various trifles, much blood was shed and out of fear nothing was offered for sale, and the scarcity grew much worse, until, after the death of many persons, the law was repealed from mere necessity." Six years later the Emperor Julian tried the same experiment with the same result. Thus came to a sad ending these early progressive programs, because edicts and statutes could not suspend the natural economic law of supply and demand. The same progressive program was tried out and failed in England under Edward III in 1349. It was tried out later under Edward IV and many other English monarchs, all with the same disastrous results. Coming down to our own country, we tried the same experiment with no better success. The Journal of Congress as far back as November 22, 1777, contains a resolution advising the states to fix prices on wages and commodities. Chapter 34, passed April 3, 1778, by the State of New York, was entitled. "An act to regulate the wages of mechanicks and labourers, the prices of goods and commodities." This act recited the resolution of Congress and fixed the prices on the wages of farmers, mechanics, teamsters and on hemp, wool, cloth, rum, sugar and other commodities and it fixed the profits of traders, retailers and vendors the same as did Diocletian's decree of 301. They both had the ultimate consumer in view. But what do you think was the result of the New York statute? The law had to be repealed the same year that it was passed. The states of Massachusetts, Rhode Island and other states tried the same experiment with the same disastrous results. Governor Cooke of Rhode Island, in a letter dated May 14, 1777, describing the result of this sort of paternal legislation, said: "The consequence hath been an almost entire stop of vending the necessary articles of life." Thus again did this abortive legislation injure the very people it was intended to benefit. I have here before me the English industrial acts down to the reign of King George in 1775. The demagogues of England are carrying her back to King Edward III, and their imitators in this country are trying to carry us back to King George the Third — back to the political and industrial midnight that preceded the birth of the American Republic. God save the mark! These reactionaries called themselves progressive, but, as Benjamin F. Butler once said, "Calling a cow's leg a tail does not make it a tail." The only true progressives in this country are those who are marching forward to the American ideal. The reactionaries who are copying ideas and systems from the distracted and decadent nations of Europe

are living in the cemetery of the past. These reactionaries know not what they do. This brief historical review of industrial legislation proves again that there is nothing new under the sun, except what we have forgotten and what we never knew.

Shakespeare in one of his splendid generalizations said: "There is no darkness but ignorance." He might have added that even the sun of intelligence can only give true light when it shines by the aid of accurate information. I am in favor of this proposed amendment because it seeks to carry into effect the American ideal of government — justice to all and privileges and immunities to all — or to none.

Mr. Dahm — Mr. Chairman and members of the Constitutional Convention. Much has been said since the reading of the proposal introduced by the distinguished gentleman from Albany. As one of the representatives of the class that this proposal seeks to prevent from receiving so-called future privilege from the State through the hands of the Legislature, I desire to express my views as a wage-earner and as a member of this Convention. I am somewhat amused at the assumed alarm of the majority of this Convention, and I have to admire the courage of the delegates who have spoken in favor of it, at the behest of the proposer and who evidently didn't have the courage to refuse him when asked to tell him the truth. The proposal as it reads and has been stated, seeks to prevent legislation in the future beneficial to the wage-earner of the State, and the proposer stated that he should like to see this proposal submitted to the people as a separate question, so that it could be settled for the next twenty years at least, whether there was to be further progress in this State, or whether we were going backward. It is estimated that 2,500,000 out of the population of this State are wage-earners, taking from this number the aliens, women and men under twenty-one years of age, would, I estimate, leave about one million, two hundred thousand entitled to vote. If this proposal could be sent to the people direct from the introducer without the approval of this Convention, I would be perfectly content, but as a member of this body I shall vote here as I would on election day, that is, against the proposition as detrimental to the best interests and welfare of the State. Perhaps Mr. Barnes' views and attitude are well expressed in the following editorial: "By his stand against Workmen's Compensation and Widows' Pension Mr. Barnes pleases the wealth of the State, and wealth never forgets favors rendered. True, he offends that small fraction of the toiling masses which knows and appreciates the hard-hearted attitude of Mr. Barnes, but the political philosophy of Mr. Barnes is that the great portion of the toiling masses seldom knows, seldomer understands and always forgets offences against them. In other

words, Mr. Barnes has always acted on the assumption that on election day the money of the wealthy is more potent than the good will of the toilers." This I regret to say is all too true. The wage earner has in the past been forced to forget the indignities put upon him by the political parties of this and other States, by coercion of employers who have been the recipients of favors from political parties, but in the life of every man there comes a time when all the coercion, all the force, all the pleadings of employer or of a political boss will not make him forget an injustice placed upon him or his. And I can say now and here, if the majority members of this Convention adopt this proposition, no amount of pleading or coercion will make the wage-earners on election day forget their plain duty. And I don't have to tell you what this will be.

No matter how much the Chairman of the Committee on Legislative Power may desire to wipe out all legislation enacted in the past, and prevent future legislation for the benefit of the wage-earners of this State, no matter how many members of this Convention may vote with him on this proposition, I deem it the greatest honor to tell you that the wage-earners of this State are ready now, one million two hundred thousand strong, union and non-union, on election day to assert themselves when the amendments from this Convention are presented for their approval. I can assure you they will vote intelligently on all subjects. It matters little at this time what you really do, for in the end, the wage-earners, the workers, the producers, the real tax payers, from whom all the money of this State is derived, shall and will be heard and it is safe to say that in the future their welfare will not be injured by legislative acts. Now, Mr. Chairman, I desire in conclusion, to quote to you a few lines from Goldsmith:

"Ill fares the land, to hastening ills a prey,
When wealth accumulates and men decay."

It will be well to bear it in mind.

Mr. Dunmore — Mr. Chairman, I desire to say a few words in favor of this proposed amendment. I agree most heartily with the statement that has been made by some of the opponents of the measure, as well as some of those who were for it, that it is one of the most important questions that have been presented to this Convention. I feel, as Judge Clearwater expressed himself, that I am astounded at the narrow construction that has been put upon this proposed amendment by some of the eminent members of this Convention. He suggested that it was by reason of their zeal in advocating their side of the question that they made these statements. I feel that it must be because they have not properly considered the rules of construction of statutes and constitutions

before they have ventured the opinions that have been given. I fail to see the danger lurking in the pathway of this amendment that has been stated by some of the eminent members of this Convention. There is no rule of construction of statutes or constitutions better settled than that the purpose of the statute shall be carried out irrespective of its language. In other words it has been held repeatedly to be the duty of the courts to inquire the purpose of the law-making power and then give effect to that purpose whether it is within the letter of the statute or not, and the same rule applies to the construction of the Constitution as applies to the construction of a statute. There is no question about that.

Let me remind some of the gentlemen of the rule of this construction. The younger men in this Convention, like myself, fresh from law school are familiar with these rules, while the older men, by reason of the lapse of years have forgotten them. In your student days they were familiar to you all.

Let me give you an illustration. There was an old statute of England which provided that any person who drew blood in a public street should be severely punished. The courts said that did not apply to a surgeon who opened a man's veins in the street when he fell down in a fit. Although within the language of the statute it was not within its purpose and therefore the statute did not apply. Let me call your attention to another older case, a decision that was made under the laws of England when every felony was punishable with death. An English statute provided that any prisoner who broke out of jail was guilty of felony. The courts said that did not apply to a prisoner who broke out of jail when the jail was on fire. As the judge tersely put it the law did not require that a prisoner should be hanged because he would not stay to be burned. Now, applying these rules of construction, is there any danger of the poor laws of this State being blocked? Is there any danger under this Proposed Amendment that we cannot take care of the poor, or the blind, or the unfortunate? Absolutely none. As has been well stated by Judge Clearwater, it is pure nonsense. The same rules of construction which prevailed in England have been inherited in this country and it has been repeatedly held in our courts that the purpose of the statute should be carried out irrespective of its reading. I would call your attention to the case of *The People ex rel. Wood in Lacombe*, 99 N. Y. 43, at page 49 where the decision said "It is the spirit and purpose of a statute which are to be regarded in its interpretation; and if these find fair expression in the statute, it should be so construed as to carry out the legislative intent, even although such construction is contrary to the literal meaning of the statute."

Another case, *The People ex rel Beebe v. Worden*, etc., 176 N. Y. page 578, the court said, "Courts do not however always construe a statute according to its strict letter. It is a cardinal principle of construction often and wisely employed, that statutes should be construed according to the intent of the law-making power and to that end the letter must give way." Again, the same court in the same case, held, "Statutes framed in general terms frequently embrace things which are not within the intent of the lawmakers and sometimes things within such intent are not within the letter." I will call your attention to just one more case, in the *Lake Shore and Michigan Southern Railway Company v. Roach*, 80 N. Y. page 344, the court says, "The law-makers cannot always foresee all the possible applications of the general language they use; and it frequently becomes the duty of the courts in construing statutes to limit their application so that they shall not produce absurd, unjust, or inconvenient results not contemplated or intended. A case may be within the letter of the law and yet not within the intent of the law-makers and in such a case a limitation or exception must be implied." So that, it being clearly apparent what this Proposed Amendment is designed to accomplish, no court would ever give it such an absurd construction as seems to be feared by some of the members of this Convention.

The purpose of this amendment is to prevent unfair class legislation. It was intended to prevent the class of legislation referred to by Mr. Sheehan so eloquently.

This amendment is intended to prohibit class legislation and also a class of legislation that has been introduced in this Convention, by proposed amendment No. 400. The proposed amendment gives the Legislature power to provide insurance for a certain class against accident, sickness, old age and lack of employment. That means that the Legislature may require the State to furnish insurance for one class at the expense of another class. If any group of people will come into this Convention and ask that the Legislature be given power to enact such a law, the same group will doubtless go before the Legislature and ask that such a law be passed. A member of the last Legislature in this State said to me; "You have no idea of the pressure brought to bear upon members of the Legislature to pass class legislation. People come down here in groups -- knowing that we desire to be re-elected every year or two, and threaten us with defeat if we do not carry out their wishes. The pressure is so strong that many legislators can not resist it. And if you people do not insert some provision in this Constitution to prevent class legislation, we are gone."

Mr. Stimson — Mr. Chairman, although I fully appreciate the earnest purpose that underlies this proposal, I sincerely hope that

it will not pass. It seems to me to aim a destructive blow at that very development of representative government for which the proposer has so earnestly stood. As I look at it, one of the principal duties of this Convention, and one of the directions in which its most earnest activities should lie is in the development of the dignity of the power of the Legislature of this State. Such restrictions as have been suggested or imposed in measures that have been considered here have been for the very purpose of strengthening the power and influence of the Legislature in the performance of its real duty. For instance, when we consider such questions as relegating to the communities of the State the decisions of questions appropriate to those communities, we are not only thinking of the benefit which will be bestowed upon our cities and our counties and our townships, but we are thinking of taking out of the Legislature a vast mass of duties, which now under existing circumstances prevent the Legislature from giving any real attention to the broad and general policies of the State. Now it seems to me that that is the principal line of approach, one of the principal questions which lies before this Convention, and it seems to me that this proposal here runs in the direction of tying, shackling, the activities of the Legislature in the sphere to which its activity should be devoted. It is true that the proposer has suggested and proposed that the second and third clauses of this amendment should be stricken out. It is true that Judge Dunmore has just argued that there may be danger of giving the first clause a narrow interpretation. But, Mr. Chairman, I conceive that the surest method of seeing what that first clause really means lies in the interpretation which its proposer has given it, in the companionship of the two following clauses, and in the moment that I have at my disposal, I wish to call attention to the danger that may come from tying the hands of the Legislature in dealing with matters which may be admitted to be included not only within the second and third clauses, but within the first clause.

Now we are very much in the habit of thinking only of normal times. We are so fortunate in living in times of peace that we do not always realize that other times may exist. As a matter of fact, although we are inclined for that reason to think of the proposition to establish a minimum wage, or as this amendment proposes establishing a wage for services to be paid to any employee by a private employer — although we are in the habit of thinking of that, simply as connected with the ordinary times within which we live, we must not forget that by putting into the Constitution a provision which ties the hands of the Legislature in respect to that class of legislation we may be legislating for very different times than those in which we now are. I wish, as a single example

of warning, to call to the attention of this Convention what is happening now in Great Britain under this very subject. Now there is a country which in military policy, or rather in the absence of military policy, is very much like our own, and the emergencies which have occurred in England are very similar to the emergencies which may occur here if we are ever unfortunate enough to be involved in war with a first-class power. Now what has happened in Great Britain with respect to minimum wage in the last few months? Why, the very life of that nation has depended upon the ability of the government to establish a minimum wage and the government now, as the price which it is paying for the ability to command munitions of war, has been obliged to step in between its employers and its employees and do what this amendment proposes, to tie the hands of the State of New York from doing for twenty years. Only a very few months ago, as you have read in the papers, the immense profits which the demand for war munitions was giving to private employers in England roused, under the natural resentment which it provoked among the employees, great strikes which threatened absolutely to paralyze the military operations of Great Britain on the Continent, and it was not until the government of Great Britain was able to step in and with a strong hand to fix the proportion of profits which should go to the employers, and to the employees by way of wages, that the work was able to be resumed and the absolutely necessary munitions of war to go on. Now, Mr. Chairman, that is simply an example of how dangerous it is to tie the hands of the representative body of the State in matters upon which may depend the very life and welfare of the State itself. In matters like this, in times like these, when every year, every decade, brings new problems, I conceive, sir, it would be to the highest degree foolish and imprudent to tie the hands of the representative body in which is vested the power of the people of this State, and prevent their acting in the face of such emergencies.

Mr. Kirby — Mr. Chairman, I tremble in anticipation of the possibility of a negative action upon the part of this body upon the assertion of a great fundamental principle of government. A refusal by this august body to accept as the doctrine of the State of New York the fundamental proposition laid down in the proposal offered by Mr. Barnes can only be construed by a large element of our population as an invitation to continue agitations which have for their purpose the exploiting of the State for the benefit of the individual. I can further view such an action as a tacit acquiescence in the policies pursued by certain aggregations of capital to further follow the pursuit of special privileges from a supine and willing Legislature. I further foresee in the refusal

of this Convention to adopt a cardinal principle of American equality an acceleration of those forces which urge and believe a re-adjustment of society and a redistribution of the wealth thereof. We complain of unrest. It has been manifested in the State of New York and in the Nation from the slumbering embers of a few thousand to near the flaming mark of a million voters who registered their protest against the existing state of affairs and who crave the privilege of creating the socialistic state. To stem the tide of socialism and to convince the various units that constitute the State that the continuance of a republican form of government cannot be assured by the adoption of socialistic doctrines has been the struggle for the past few years of an army of writers, thinkers and publicists, and for the first time in the history of the great imperial Commonwealth of the State of New York an opportunity has been provided for the construction of a Gibraltar which for at least a period of twenty years will act as a buttress against the advancing tides of socialism. What member of this Convention, what intelligent law-abiding American citizen subscribe to the doctrine that the Legislature should grant privileges and immunities to any citizen or class of citizens? Every man who is intellectually honest and loves his country and hopes for the preservation of its institutions and its present form of government unswervingly and unrelentingly subscribes to the ancient fundamental principle of American liberty and American independence, of equality to all men and no privileges or immunities to any individual or class that is not to be extended to the whole. For some reason or another some of the great minds of this Convention have believed it to be their sacred duty to create an avenue of escape from the affirmative adoption of this proposition in anticipation of dire results, the product of their fanciful fears, and I may be rash enough to say intellectual timidity. Who is there in this Convention that dares stand upon his feet and assert that he is in favor of extending to one class, to the exclusion of another privileges and immunities not enjoyed by all the members of the State? I have no patience with the suggestions that have been made that with the adoption of this proposition the charitable, educational, eleemosynary and reformatory institutions of the State would be in the slightest degree impaired, impeded or injured in any manner. I have always understood as a lawyer, and I assume that it is understood by every intelligent citizen, that in organized society under any form of government, whether it be autocracy or democracy, that it is the duty of society and a part of the plenary powers of government to guide, protect and maintain the government in its integrity, to preserve the operation of its machinery and to maintain, protect and support those who are

unable to maintain, protect and support themselves. And what is the effect of the adoption of this proposition? Before the State shall encumber itself and take upon itself the burden of additional obligations for the expenditure of public money for the support, maintenance and benefit of any of the members of the State, the electors shall determine by their ballots whether or not such a result is to be desired.

The burden of taxation falls upon the realty of society, the individual home owner is the one most vitally interested in the adoption of legislation which creates a permanent and fixed charge upon the State and towards which he must contribute. I may be styled a reactionary; I may be insensible to my duty as a citizen and a representative of a great and prosperous district, but I can conceive no greater or fuller performance of duty upon my part than voting for the adoption of a proposition which shall permit the thousands of voters in the great Empire State to pass deliberately and solemnly upon the question as to whether or not a special privilege or immunity shall be extended to any element of society which permanently affects the policy of the State and the burdens of its members. I can conceive no greater duty which I owe to my constituency and to the Legislature as the representative of the people than by voting for the adoption of this amendment which shall protect the Legislature and its representatives against the alluring appeals of the demagogue and the denunciations of the mob, and which shall supplant impetuosity of speech and hastiness of action with deliberation, calmness and sincerity of purpose. I have no fears of ill results from the adoption of this amendment. I do not hesitate now to subscribe to the principles enunciated therein because they are the fundamental principles of a representative form of government, principles enunciated by the founders of the State and never denied or repudiated by any loyal American citizen; but on the contrary the slogan of the very element of society which will oppose the adoption of this amendment and whose cry of no special privileges and equal rights to all has allured thousands and thousands of well-thinking and well-meaning people to cast their lot under the banner of socialistic reform. I have no quarrel with the principle that has heretofore been adopted by the people of the State in favor of the principle of a workmen's compensation act, but I do assert that in its particular operation it is a misnomer; that in many instances, by being an exclusive remedy, it destroyed meritorious causes of action and substituted in place thereof compensation, which reduces the recipient of it to the grade of a pauper and a beggar on the street. This policy has been fixed and declared by the people of the State and with the will of the majority this

amendment and its sponsor has no quarrel and in no manner seeks to modify, nullify or impair the result, and because the people of the State have adopted this policy urges its development for the production of the greatest benefit to the unfortunate members of society who are the recipients of its bounty. But before we shall further explore into those fields wherein and whereby the vision and perspective of the youth sees in the future aid from the State, no matter what his conduct in life may be, which will impair and well nigh destroy initiative, thrift, prudence and industry, which will annihilate the ideal in the mind of every citizen, the highest development as a protection against the uncertainty of the future before we shall tempt any element of the State to become mendicants and dependents upon society, let the electors of the commonwealth determine whether or not it shall take one step further in the creation of the paternalistic and socialistic State.

No man who sat here in this Convention and listened to the words of Judge Clearwater can ever forget his description of the ideals of the generations from whom the men of this Convention are the children: "Frugality, honesty, simplicity, more education for his boy than he had himself, greater opportunity to his child so that his child should never be dependent upon others, the desire to amass enough of a competence so that in his old age, when helpless, possibly when ill, he should not be dependent upon others — the pride of the American. That was the American spirit." I cannot conceive any greater duty upon my part as a citizen of this Commonwealth and a representative of an enlightened and Christian constituency than to advocate the adoption of a proposition, popular or unpopular though it may be, which shall give the people of the great Imperial Commonwealth of the State of New York, and them alone, the right to determine whether or not any class of individuals shall be granted any privilege or immunity not granted equally to all members of the State.

The Chairman — The Chair desires to announce that in accordance with the rule heretofore adopted, the remaining hour is to be equally divided among the opponents of the measure and the proponents.

Mr. Wickersham — Mr. Chairman, I yield twenty minutes of my time to Mr. A. E. Smith.

Mr. A. E. Smith — Before I attempt to show to the Committee of the Whole, what, in my opinion, would be the effect of a proposal of this kind, put into the Constitution twenty years ago, or earlier than that, I want to answer one or two of the suggestions that have been made. Now, my friend from Erie waxes eloquent when he speaks about the representatives of the people in the Legislature. Now what enactment goes on to the statute books

except through those same representatives? What has happened in this State that justifies this amendment to the fundamental law, except just exactly what the representatives of the people have been doing here in this room and in the Senate. We are getting far away from our ideas of government. Apparently preaching for a return to the American ideal, we are ourselves, by the force of our arguments, drifting in the other direction. Now I may be entirely wrong. The gentlemen around this chamber would lead us to believe that law in a Democracy is the expression of some divine or eternal right. I am unable to see it that way. My idea of law and Democracy is the expression of what is best, what fits the present-day needs of society, what goes the farthest to do the greatest good for the greatest number. After all, is not that the reason for the existence of the great political parties? Has it not been conceded time and time again that the only question at issue between them is how to reach it in the safest, the surest, and the quickest way? In the course of the debate reference was made to some of the statutes that would be supposed to fall under this prohibition. I am afraid that a number of men have an entirely wrong idea about workmen's compensation. Nobody has ever been able to satisfy me that that is a privilege or an immunity. I am unable to figure how that comes into this discussion at all. My idea of workmen's compensation — and I may say it is the idea underlying the thoughts of the men that have suggested such a thing — is that workmen's compensation is an indirect tax upon the industry of the State for the purpose of relieving the shoulders of all the people from carrying the burden of the men that are injured or destroyed in the upbuilding of an industry. The only part of it that could be said to be a privilege is that part of it that makes all the people of the State pay the expenses of the Commission, and in order to cite to this Convention that the men that drew it had that in mind, by the very provision of the act itself, it is provided that after the first day of December, in the year 1917, the cost of maintaining the Commission is to be assessed back upon the State fund and the insurance companies as a further tax upon them for adjusting their business. Now where does that come under this proposal?

The second clause providing for or authorizing the expenditure of public money: It is said that has reference to two things. First we will take up the so-called mothers' pension. That is a wrong name for the act. There is no pension to a widowed mother. The State long years ago adopted the policy that it was, through its civil divisions committed to the care and education of the homeless and destitute children of the State. The formation of the child welfare boards was simply a change in the method — no new policy

but a change in the method. Rather than have the institution the agent of the State, the State decided that work could best be done by the mother if she was a fit and proper person, and forthwith it transferred that agency from the institution to the mother herself. The mother, as such, receives no money; or, rather, not one dollar is contributed to her for her support. Everything she does, she does as the agent of the State, just as surely as did the institution do it, and for the care and maintenance of her children, her home is temporarily turned into a state institution. Now in regard to pensions, a pension is not a payment of money for services not rendered. As long as there has been in any civilized community a pension, whether it be private or public, the theory of it was that it was an increase in salary to be paid to the man between the time he was able to render service and the time of his death. The labor laws — why, nobody believes that the labor laws are privileges. As I understand a privilege, it is a matter of favor; you have to come and look for it. All the laws that are on the statute books that relate to the hours of labor of women were adopted after the doctrine was set down in the United States Supreme Court. Here is what they say, speaking about the night work and the length of hours per week: "That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for sustenance, is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity, continuance for a long time on her feet at work, and repeating this from day to day tends to injurious effects upon the body, and as healthy mothers are essential to progress in strengthening the physical well-being, the woman becomes an object of public interest and care in order to preserve the strength and vigor of the race."

That is equally true where labor laws are enacted for the preservation of the health of the men of the State because, after all, what is the State? Green fields and rivers and lakes and mountains and cities? Why, not at all. It is the people, all the people of the State, and anything that tends to make the members of the State strong and vigorous in turn helps to make the State so, and every one of these enactments has been for the general good and could in no way be described as a privilege. Supposing that this had been enacted, as I said before, twenty or more years ago. Let us see the kind and type of legislation that would probably come under its provisions. The First and Second Judicial Districts of the State pay for their libraries, their attendants and part of the judge's salary. The whole State pays the entire expense for the rest of the State. Now that is both an

immunity and a privilege. There is no privilege as great as that which relieves a man from paying taxes. New York city pays the entire expense of its own health department. The whole State pays for the health department for the rest of the State. That is absolutely a privilege and an immunity. New York city pays for the First District Public Service Commission; the whole State pays for the second. For many years superintendents of elections supervised elections in New York city, but not in the rest of the State — an immunity granted to the rest of the State. Prior to 1911 we had one code of election laws for the city of New York, and an entirely different code for the rest of the State. Right at this point I may say to the Convention that if both election laws were spread upon the desks before you, there was just as much difference between them as there is between the Highway Law and the Agricultural Law. The State sustains agricultural schools and schools of forestry, but no other schools. What greater privilege is there accorded to any class of men in the State than the support and maintenance, as it stands today, of the Department of Agriculture? There is no Department of Industry. That is a special privilege. By the way, it might be interesting to know why the Department of Agriculture was organized. It was organized for the very same purpose that all these labor bills have passed and become laws: It was organized to be a check upon the greed of men that had under their control the natural resources of the State. Men looked for too many crops from their lands; they did not provide for the future when it should be in the hey-day of its fullness and of its bloom. As a check on their greed the department was organized to further a campaign of education, to show them how to get the greatest possible results out of that resource that was given to them. So it might truthfully be said that all the labor laws that this seeks to prevent the Legislature from enacting are nothing more or less than campaigns of industrial education. What about the Excise Law? Written in every line of it is privilege and immunity. A man has the privilege of transacting business in this part of the State for half what it costs in the city of New York. The very definition of a hotel in the Excise Law spells out privilege in every line of it. A man with nine rooms in his hotel cannot sell a drink on Sunday, but a man with ten rooms can sell it. All he has got to do is to have a sandwich with it. This is privilege.

The State of New York pays for dead horses and dead cattle; nothing at all for dead hogs or dead dogs. Privilege! The State of New York appropriates annually for the maintenance of Raybrook Sanitarium, for the cure and treatment of tuberculosis, but for no other disease. What is that? That is privilege. The

Tenement House Law is a privilege, unquestionably. If a man happens to reside in a house in which there are three or more families doing their own cooking on the premises he is guaranteed by the State of New York that there is to be official supervision over that house in his particular interest. That is a privilege. Who would think of repealing that.

The Chairman — The Chair desires to say that twelve minutes of the thirty minutes allotted have already been consumed.

Mr. A. E. Smith — Now, this is the point. There is a sufficient answer to this proposed amendment —

Mr. Barnes — Will the gentleman yield for one moment. I would like to have the official time of the beginning of this discussion.

The Chairman — Ten thirty-six.

Mr. Barnes — I have no objection at all if the half-hour is over-run, if we may have the same treatment.

Mr. Wickersham — I would be glad to consent to that but I think we have no power to modify the rules.

Mr. A. E. Smith — Now let us get down to business and stop all this constitutional talk, and the talk about the representatives of the people and all of that, when we do not really believe in it. Let us get right down to hardpan. The question we have to deal with here to-night is this: Is this a wise thing for this Convention to put its stamps of approval upon? No matter what it may prevent, no matter what it may promote, there is throughout the length and breadth of this State a general belief that the men that proposed this thing have in mind the setting of the fundamental law against any extension of workmen's compensation; the people have in mind that it is proposed to array the Constitution itself against the decisions of the Supreme Court as to what is a matter of duty on the part of the State; they have in mind that it proposes to erect a wall around the representatives of the people to prevent the wholesome, beneficial change in State policy that came from the enactment of the child welfare bill. Whatever may be the final result of it, we are to-night by our votes to decide whether or not we are to put our stamp of approval upon a proposition which, if enacted, means that, so far as the fundamental law is concerned, having in mind that it is binding on the direct representatives of the people, having in mind that wealth because of its own strength and its own power can protect itself and that the great curse in poverty lies in the utter helplessness that goes with it — having that in mind, is it wise, is it prudent for this Convention to do what it can do to reduce the basic law to the same level of the cave man's law, the law of the sharpest tooth, the angriest brow and the greediest jaw? I respectfully but firmly suggest that we

should not favorably report this because I think it is a great mistake.

Mr. Wickersham — Mr. Chairman, I agree — almost I had said, Mr. Smith has expressed in measured terms a feeling which I find difficult to express in measured terms. I think there never was placed before any deliberative assembly so foolish, so reactionary, so absurd a measure as that which is before us to-night. I cannot conceive of a council of folly greater than that which brought forth before this body such a proposition as this for serious men gathered together to frame the fundamental law of the State, to write into the Constitution of the State of New York. What does it propose, Mr. Chairman? It proposes to abdicate that which has made government possible; it proposes to tie the hands of the Legislature so that it may not meet the special cases which arise in our complex society and legislate for them without embracing everything else. The purpose behind the enactment goes farther than the language itself. Judge Dunmore has well said that we must look to the purpose of those who framed this proposed enactment. The purpose is to destroy the ability of the State in the exercise of its police powers to deal with the problems which arise in our State affairs. Speaking for the party to which I owe allegiance, I say that the proposition is in direct contradiction to the pledge embodied in its platform at Saratoga last year. I will read from that platform: "We approve the principle of the compulsory compensation of employees and their families for death or injuries resulting from the risks of their employment and the protection of the public health, the public morals and the public safety through the exercise of the police power. We recommend that this power be broadly recognized and safeguarded in the Constitution" — we do not recommend that it be elided from the Constitution — "but without unnecessarily or unduly interfering with any of the fundamental rights guaranteed by the Bills of Rights." Now, Mr. Chairman, what is proposed by this measure? It proposes to prohibit the Legislature from passing any bill granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State. Mr. Chairman, Judge Clearwater took me to task the other day for a narrow construction of this language. Let me point out to him what this language really means. We have already in section 18 of article III of the Constitution a prohibition against the Legislature passing any private or local bill, "Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever." The Court of Appeals in construing that language has held that where a privilege is granted to one body of incorporators, or one class, which is not granted to

others, it is not in violation of that act unless by its terms it expressly excludes others from the exercise of a similar privilege. This measure goes farther than that because it prohibits granting to any class of individuals any privilege or immunity not granted equally to any other class of individuals. Therefore, instead of a narrow construction being placed upon that language by me when I interpreted it a day or two ago, the language goes far beyond the limits that I ascribed to it, and the very next provision limits the capacity of the State to use its own moneys for any of those great philanthropic purposes to which the moneys of the State have been extended from time immemorial. Mr. Chairman, I would characterize this measure in two words, as, first, a measure repealing the police power of the State; and, second, a measure to destroy representative government and to establish government by referendum. Because of both of those considerations, added to the further consideration that I am unalterably opposed to preventing the Legislature of this State from responding to the dictates of humanity, I oppose the enactment of this measure and I trust it will receive the condemnation at the hands of this assembly which it deserves.

Mr. Clearwater — Mr. Chairman. As I listen, sir, to the suspicions and to the expressions of distrust of the very eminent gentlemen on both sides of this chamber, and who oppose this amendment, I am reminded of the delicious bull of the member of the London Parliament who, in expressing his distrust regarding a measure which he did not fully understand, said: "Mr. Speaker, a'l along the untrodden paths of history, we see the hideous and slimy foot steps of an unseen hand." And that very aptly characterizes that confusion of metaphor and that confusion of thought that characterizes the utterances of many of the gentlemen who have opposed this amendment. Now, what is the amendment, sir? "The Legislature shall not pass any bill granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State." The gentleman from New York, Mr. Smith, who, I understand, is not a lawyer and makes no pretense to being a jurist, has far more accurately defined the distinction between a privilege and an inhibition than have many gentlemen with greater claims to information upon the subject. Now, what is a privilege? It never was more accurately defined than in the Pandect of the great Emperor Justinian, a definition accepted by the Supreme Court of the United States, a definition accepted by the Court of Appeals of this State, a definition accepted by every court in every civilized country; and how did Justinian define it? A privilege, said the great lawgiver, is a grant by the supreme power of the State in derogation of the com-

mon right. Do I understand any of the gentlemen in this chamber who oppose this bill, desire that the Legislature of the State of New York shall grant any privilege in derogation of the common right? I trust not, sir. That is a privilege. Any grant to any class or to any individual in derogation of the common right; destructive of the common right; contrary to the common right; limiting the common right; that is a privilege. And the granting of any such thing as that is what this amendment seeks to prohibit.

I have listened here with admiration to gentlemen who have talked about the Workmen's Compensation Act; to gentlemen who say that this is a retrogressive, not a progressive, measure that we are debating, that is specially designed to destroy the rights of workmen. The gentlemen do not know that for many years prior to the meeting of this Convention, prior to the passage by the Legislature of the State of New York of a Workmen's Compensation Act,—that in the State Bar Association of this State, I labored year by year for the passage of a recommendation by that association of an intelligent and just workmen's compensation act; that my name is appended to report after report of that association advocating a just measure of that character, long before gentlemen, some of them, in this chamber, were admitted to practice law at a bar of this State. Now under the common law rights—the Pandect of Justinian defined the civil law. Under the common law, privilege is held by the decisions of our master court, to be vesting with peculiar rights or prerogative of an individual or a class, to the derogation of others, a right granted to a class, but not permitted to be enjoyed by all, a power conferred on or possessed by individuals or classes in derogation of all general rights, an exemption by virtue of class, office or station from the burdens or liabilities to which others are subject. Now, there are familiar instances, sir, which would occur to every man's mind—privileges of an ambassador, privileges of a member of Congress, or a member of Parliament, their personal privileges. Exclusive privileges are those that preclude all persons but the possessor from exercising them, as for illustration, the exclusive privilege of making and vending a patented article, granted, of course, by the laws of the United States, not by the laws of the State of New York; privileges of a constitutional convention, which affect its safety, its dignity, the integrity of its proceedings, or the right, reputation, conduct and freedom from censure of the individuals who compose it. Now, such privileges as that are provided for by the Constitution itself. There are many privileges in our Constitution; there are many privileges in the Constitution of the United States. This amendment does not interfere with

them, sir. The gentlemen who have been opposing this amendment — why, when I consider the marvelous collocation of mixed metaphor of my friend from Broome county, and the vast mass of cases which in his perturbed imagination he thought were affected by this amendment, I was amazed, because I have known him for a long time, and know him well; I know him to be a gentleman of most clarified intellectual processes. I was amazed at the confusion of thought with which he collated the instances that he thought this amendment would interfere with. The Legislature shall not hereafter! Do the gentlemen comprehend the meaning of the word “hereafter”? There is no interference with what exists. Why, if this were not a deliberative assembly, sir, if this were not a parliamentary body and I could give to my thought that satirical form of expression which is permitted at the forensic bar, it would afford me the greatest delight; but subjected to the restraints of parliamentary procedure, it is not possible, or proper, at least, that I should refer with the accuracy I would like, to the confusion of thought I have found to exist here.

Now, in addition — and my friend from New York, Mr. Smith, had far more than a glimmering idea of the distinction between privilege and inhibition, and I must confess, as I have listened to this debate, it has impressed me he is the only man of all who have addressed you who has had a proper conception of the distinction between privilege and inhibition. For instance, inhibitions have been held to be a legislative enactment requiring that contractors shall accept no more than eight hours work in twenty-four, excepting in cases of necessity. It has been said here in spirit, at least, to be a privilege; the Court of Appeals says that that is an inhibition and not a privilege; and that is so. It is an inhibition. Why is it an inhibition? Because it is the natural right of every man to work twenty-four hours a day if he wishes to. When you say that he shall not work by legislative enactment, when you say that he shall not work more than eight hours at one time on one job, that is an inhibition upon his natural right. I regret extremely that my distinguished friend who presides over that Trappist Monastery at Ithaca is not here this evening. If there is a man upon the floor of this Convention who I had supposed thought clearly, it was he, but he seemed to think that the act of the Legislature prescribing that mufflers must be placed on motor boats at Lake George was a privilege to him and to the learned and aristocratic and wealthy and popular dwellers upon the shores of that beautiful lake. That, sir, was not a privilege. That was an inhibition upon the owners of the motor boat, who have the right, the natural right, to sail up and

down that lake without mufflers, in any way they choose. When you say they must use mufflers, you do not grant a privilege to the head of a Trappist Monastery, but you put an inhibition upon the owner of the motor boat.

The statute inhibiting the employment of women in saloons, theatres, and other resorts where liquor is sold, does not confer any privilege upon women, but it imposes an inhibition upon the keepers of those places. A law prescribing that minors shall not frequent such places, confers no privilege upon the minor, whose natural right it is to go where he chooses, subject only to parental control, but is an inhibition as I have said upon the keepers of those places, for the public good. And the statute defining nuisances, prohibiting their commission or maintenance, grants no privilege to persons who might be injuriously affected by the existence of the nuisance but imposes a restriction, for the public benefit upon the individual who is responsible for the maintenance or commission of a nuisance. Refusing any person accommodation in a public conveyance or place of amusement confers no privilege upon those seeking accommodation in common carriers, for it is the duty of a common carrier to carry all persons unless affected by contagious disease or against the public peace. It is only necessary, sir, that I should call attention to these familiar, homely examples, taken from every day life to demonstrate to your mind and to the mind of every man here the difference between privilege and inhibition, a distinction that has been entirely lost sight of here until the gentleman from New York, Mr. Smith, rose to debate this important question. It had been amazing to me, sir, that two years ago, in the address of which I have heretofore spoken, I advocated this exact thought as necessary to the preservation of American ideals and American government. I was hailed throughout the length and breadth of this country as a very Daniel come to judgment, and now, because my friend, Mr. Barnes, has the courage of my convictions and introduced a Constitutional Amendment to put into the organic law what two years ago I advocated, I find myself classed with him as a retrogressive and a reactionary of the most vicious order. Are we to suppose here, sir, that the old adage of the folk lore of England applies, that some of us may steal a horse while others of us may not look over a hedge? It would seem so. There never in my judgment was a wiser amendment proposed here. "The Legislature shall not pass any bill granting hereafter to any class of individuals any privilege or immunity not granted equally to all members of the State." Reactionary? I think it was Madam Roland, sir, who said, "Liberty, Oh, Liberty! What

crimes have been committed in thy name." And I think, sir, we may well say here, after listening to this debate, Progress, Oh Progress! What follies are advocated in thy name.

This is a progressive measure, not a reactionary measure. Why it was only last Friday one of the greatest journals in America, a journal of the greatest light and leading and standing in this State, commenting upon what I said standing in this place, said that it went to the very roots of government; that it went to the preservation of the American ideal, an ideal that needs preservation and protection in the presence of the assaults which are being made and which the future will bring to bear upon it. Of course courtesy, parliamentary usage, the nuances and conventionalities of a Constitutional Convention require that those of us who advocate this amendment should attribute to our adversaries the most unselfish of purposes in opposing it because, sir, this Convention certainly at least is not a theatre where political fortunes are to be advanced by the advocacy of alleged and fancied popular causes. This, sir, is the theatre where the Constitution of a great State is to be framed, not only to remedy evils of to-day but to guard against the impending evils of the morrow. My learned friend, the attractive, fascinating, alluring, seductive, former Secretary of War, drew a lurid picture of what would happen and of what was happening now in England, of what would happen to us if the Legislature had not the right to pass a minimum wage law. My friend overlooked the fact that when the Parliament of England passed an act prescribing the minimum wage law the Parliament of England acted for the Empire of Great Britain and not for a single part of it. This constitutional amendment would not prohibit the Congress of the United States in time of peril or in time of war from taking steps for the protection of the country. There is no thought of that character; no purpose of that character; not a possibility of that character. Time is pressing sir, and there are others to follow. I want to repel with all the earnestness of which I am capable the idea that there is anything subtle, surreptitious, hidden, forbidding or improper intended by this amendment. This amendment is one of the broadest, most fundamental, most important in character and once again I wish to say to the members of this Convention that if they will cast aside any thought, any inspiration but that of framing a great Constitution for a great State their second, sober thought, and their best informed judgment, will prompt them to support it.

Mr. Barnes — Mr. Chairman, for the purpose of clarification I wish to say first that you doubtless are all aware that a resolu-

tion has been introduced in the Convention that if this amendment is finally adopted it be submitted to the electors in the year 1917, the object being that inasmuch as the discussion here has developed such remarkable varieties of opinion, it would be most unwise to attempt in the few weeks before election to have this matter thoroughly understood by the voters. It is therefore wise, in the event that it is adopted, that a discussion of at least two years be given to this fundamental of what the people of the State of New York think on this matter. Secondly, I accept the amendment of Mr. Olcott, striking out the second and third paragraphs, in order that the question may be entirely clear when you come to vote as to what this amendment means; leaving it, therefore, that "the legislature shall not grant any privilege or immunity to any class of individuals not granted equally to all the members of the state." That will then be the issue and the issue only. If this Convention adopts the proposal to submit it to the electors two years hence, every citizen of the State who is a voter will at that time have an opportunity to express his, and perhaps her opinion. Then it will be determined and then only, what is the sentiment of the people of the State upon this subject and no delegate in this Convention can say what that sentiment will be. He may predict many things. A prediction was made in the year 1913 by an organization in this State represented in one of the speeches, that Judges Bartlett and Werner should not be voted for at that election and they received 1,200,000 votes, with some 200,000 votes against them. We cannot predict the wishes of the electorate. It is right and proper that we should express our opinion and ask them what they think of it, which is exactly what I am proposing. You must be aware if you have looked over your Constitution carefully during the last few days that article I, section 19, entirely covers this whole question of legislation for the benefit of employees; that privilege was granted by the people in the fall of 1913 and it is in the Constitution at the present moment and every man in this room I assume knows it. There are other privileges in the Constitution which I will not enumerate but they are many — quite a number — for a moment I will simply say that in article II, section 1, and article II, section 4, in article V, section 9, and several others which I wish simply for the purpose of the record to mention and if I may be allowed to write these sections in the record, I do not suppose there will be any objection, as I see my time is limited and I will not have time to bring this matter to the conclusion that I intended if I had had the time I expected.

PRIVILEGES AND IMMUNITIES

CONSTITUTION OF 1894

- Article 1, Section 19..... Privilege to employees.
- Article 2, Section 1..... Privilege to male citizens to vote.
- Article 2, Section 4..... Rural voters. Immunity from registration.
- Article 3, Section 28..... Which prohibits the granting of a privilege by denying extra compensation.
- Article 5, Section 9..... Preference to veterans of the Civil War.
- Article 8, Section 1..... Privilege in the creation of corporations.
- Article 8, Section 4..... Principal of no privilege as recognized in respect to banking charters.
- Article 8, Section 9..... Specific provision for the support and education of the blind and juvenile delinquents.
- Prohibition to granting the credit or money of the State for private undertaking.
- Same prohibition in section 10 applying to municipal corporations.
- Article 9, Section 4..... Denies the Legislature the right or privilege to appropriate money for or give aid to denominational schools.
- Article 11, Section 1..... Males over 45 and under 18 exempted from military service.
- Article 12, Section 1..... May be regarded as conferring upon laborers engaged in public work, special privileges which are not conferred upon other laborers.

This proposal meets not the present, but the future. It meets, as I said, in my remarks, just the one point: When regulative legislation takes the form of benevolence and privilege, we have crossed the line. This cannot interfere with the use of the police power in the passage of legislation, because that power is inherent in the Constitution, but it prevents benefits, the handing over of a cash contribution by the State to any member of the State, to any class of individuals of the State. That is the evil that it is intended

to reach, and that is the proposal of those who have a propaganda that they intend to put into operation which is to my mind utterly violative of the American ideal of equality. These privileges I say therefore should not be granted because they are new, they are unwise perhaps but upon that point we can merely make a declaration of what we say, and then as Mr. Smith says in regard to privilege, they must come and look for it, I say they must come and look for it to the electorate of the State and not to the Legislature which is not chosen and is not established for the purpose of granting privilege or immunity. That is the only issue which is involved in this proposal. I said the other day that it certainly is true that this method of thinking of which you have heard much here will not lead to the attainment of the socialist ideal, but to the tyrannous autocratic state, not democratic, in a single form, but established in the name of democracy, and those gentlemen on the Republican side of the House, if we have sides here, who have shown the greatest and the most persistent opposition to the adoption of this proposed prohibition upon privilege and have through the agency of the Committee on Governor and Other State Officers, brought into this Convention a report which justifies my prediction of the autocratic state, knowing very well as they must that no democracy can withstand the appeals for privilege and that in order to save and preserve order under such a system you must establish autocratic government, as that committee proposes; and I wish to say to Mr. Wickersham in conclusion, thanking him for the remarks which he made the other day in which he said, "The proposition advanced by the delegate from Albany embodies principles which he has expressed frequently. They bubble up from the depths of an earnest conviction that we all recognize. They are I think the by-product of that magnificent fight which he conducted three years ago which laid the American people under lasting obligation to him." I will say, sir, that upon that occasion I conducted no battle against the candidacy of any man who was a candidate; there was nothing personal in that convention; whatever I may have done at that time was in opposition to the principles advocated of absolute and complete injustice which that candidate proposed to place in the Republican platform with himself at the head; and there was no personal opposition. And I believe that I am now indicating just as much service as Mr. Wickersham claimed I did at that time, when there were many faltering men, many cowardly men who did not know what the battle was about and who do not see now in the proposal I make that it is in order that the people of the State should establish their own opinion upon this subject, so that we may find out what is the opinion of this State at the ballot box, the only place where we can find out.

Mr. Wickersham — Mr. Chairman, I now renew my motion to strike out the enacting clause in the measure, and I call for a vote on that.

Mr. F. L. Young — Mr. Chairman, just one minute. We have had it represented to us to-night that a lot of legislation which some of us at least thought conferred privileges were not privileges at all. Before I vote I would like to have some one of the advocates of this measure speak in concrete terms of exactly what kind of legislation is to be cut out by the language of this proposed amendment. Then I shall be prepared to vote.

Mr. Barnes — Mr. Chairman, I thought I had stated that. Any benevolence, any giving of money is a privilege. A grant of any kind, not granted to others is unquestionably a privilege; as the example raised by Mr. Wickersham in relation to a corporation favored by a legislative act. That would be prohibited unquestionably. There are many things of which Mr. Smith spoke that I did not have time to discuss because my time was exhausted. Many of them would be privileges, and he looked over to me as though I cared whether they were in the law or not. If they are a privilege I am against it. I would like to ask, as a matter of order, whether or not the amendment offered by Mr. Olcott cannot be disposed of, or accepted.

Mr. Wickersham — Mr. Chairman, I think the proper order of business gives to the motion to strike out the enacting clause priority over every other motion, as I understand it.

Mr. Barnes — I cannot agree to that.

The Chairman — I think, under the rules, as I understand it, the gentleman from New York really offered this amendment. The motion to strike out is after all nothing but an amendment that was offered by the gentleman from New York, Mr. Parsons, and so there would be no mistake about it, Mr. Wickersham reoffered the same amendment to-night.

Mr. Sheehan — Mr. Chairman, according to all parliamentary law that I have ever heard anything about you have the right to perfect a bill before you destroy it and any amendment germane to this proposition must supplant the proposition to strike out the enacting clause.

Mr. Wickersham — Mr. Chairman, as I understand it, the motion to strike out the enacting clause is always in order and takes priority over all other motions to amend.

The Chairman — The Chair will rule that unless the motion made by the gentleman from New York prevails in this session to-night, the amendment offered by Mr. Olcott has precedence. Both are amendments.

Mr. Wickersham having made the motion to-night subsequently

to the amendment offered by Mr. Olcott, Mr. Olcott's amendment will be first considered.

Mr. Wickersham — Well, Mr. Chairman, just as a matter of record, I made a motion to-night, you may remember, before anything else took place and called attention to the fact that Mr. Parsons had made the motion the last time we sat, and in order that the motion might be made formally I renewed it at the beginning of this session, and so that if it is a question of order or time that motion was first made.

Mr. Barnes — I submit, Mr. Chairman, in the name of justice, of which I have just spoken, the evidence that Mr. Wickersham gives to this particular matter is an evidence to my mind that he was not willing to have me perfect my bill before he moved to strike out the enacting clause.

Mr. Wickersham — I cannot debate this question and I make the point of order —

Mr. Whipple — Mr. Chairman, point of order.

The Chairman — The gentleman will state his point of order.

Mr. Whipple — My point of order is that the motion of the delegate from New York is out of order for the reason that in any legislative body and deliberative body where bills and resolutions have ever been connected and put in shape, before you can amend or strike out the enacting clause you must first attempt to perfect your bill, section by section. Now here is a motion pending to try to perfect this bill, and until that is passed and acted upon the motion of the gentleman from New York is entirely out of order under all the rules I have ever heard of.

The Chairman — The Chair rules that the motion to strike out is an amendment and, under our rules, the motion that is made in one meeting of the Committee of the Whole, and the Committee thereafter rises and reports progress and asks leave to sit again, all amendments as I understand the rules are lost and they must be again re-offered. With that ruling, Mr. Olcott's amendment must first be considered, because all amendments must first be considered.

Mr. D. Nicoll — Mr. Chairman, I raise the point of order. I understood Mr. Barnes to accept Mr. Olcott's amendment.

Mr. Barnes — I did.

Mr. Quigg — That does not accept it for the House.

Mr. Chairman — The question therefore is, unless the Convention rules otherwise, on the amendment offered by Mr. Olcott. The Secretary will read it.

The Secretary — Page 1, line 6, strike out beginning with the word "providing", everything thereafter down to and including the word "employer" in line 11.

The Chairman — The question is upon the amendment just read. Those in favor of the amendment will remain standing until counted. The gentlemen will be seated. Those opposed will rise and remain standing until counted. The amendment has been adopted.

A Delegate — What is the vote?

The Secretary — Ayes 86, Noes 12.

The Chairman — The question now occurs upon the amendment offered by Mr. Wickersham, which is to strike out the enacting clause. Those in favor of the amendment will rise and remain standing until counted. Those opposed will rise and remain standing until counted.

The Secretary will now announce the result.

The Secretary — Ayes, 70; Noes, 38.

The Chairman — The amendment has been adopted.

Mr. Wickersham — Mr. Chairman, I move the committee do now rise.

The Chairman — The gentleman from New York, Mr. Wickersham, moves the committee do now rise. Those in favor will say Aye, contrary No. It is carried.

(President Root resumes the chair.)

The President — The Convention will come to order.

Mr. J. S. Phillips — The committee having had under consideration General Order No. 25, has directed me, as its chairman, to report that the committee recommends the striking out of the enacting clause in said proposal.

The President — The question is upon agreeing to the report of the Committee of the Whole.

Mr. Barnes — Mr. President, I move to disagree with the report of the Committee of the Whole. I do not know that I have this form exactly right, and that that motion lie upon the table.

Mr. J. L. O'Brian — Mr. President, I think the form of motion should not be to disagree with the report, but to recommit the bill with directions to report if that is what Mr. Barnes desires to do as a question of order.

Mr. Barnes — Mr. President my point is this: Inasmuch as only about one hundred delegates have voted on this motion I wish to have a roll call so that each member may be put on record.

Mr. J. L. O'Brian — I am merely endeavoring to point out that the motion, in form is not proper. There is no motion to disagree. The motion is, under the rules, and as I submitted for Mr. Barnes' benefit if he desires to bring the matter up, he should move to recommit the bill with instructions to report favorably.

Mr. Barnes — Is that in order, Mr. President?

The President — The Chair's view is this: That upon the report of the Committee of the Whole, the report itself brings

before the Convention the question of agreement. That cannot be displaced by a simple motion not to agree. You cannot displace a motion to adjourn by a motion not to adjourn. The question is the question of agreement. That can be put over until to-morrow, or a different motion can be made such as a motion to recommit or to recommit with instructions. The question before the Convention, failing some different motion, is to agree. That motion can be laid over until to-morrow. The question on agreeing can be laid over until to-morrow.

Mr. Barnes — Then I make that motion, Mr. President, to lay that over until to-morrow at twelve o'clock.

The President — Is there objection?

Mr. Wickersham — Mr. President, I object.

The President — Mr. Barnes moves that the question upon agreeing to the report of the Committee of the Whole be postponed until to-morrow at twelve o'clock.

Mr. Barnes — Is that debatable?

The President — That is debatable, it is open to a limited debate, not on the merits of the question, but simply on the question of postponement.

Mr. Barnes — All I have to say, gentlemen, is that it seems to me fair.

Mr. Wickersham — Mr. President, I withdraw my objection.

The President — The question upon agreeing to the report of the Committee of the Whole will be postponed until twelve o'clock to-morrow.

Mr. Wickersham — Mr. President, I move the Convention do now adjourn.

The President — It is moved that the Convention do now adjourn. All in favor will say Aye, contrary No. The motion is carried and the Convention stands adjourned until ten o'clock Tuesday morning. Whereupon, at 11:47 p. m. the Convention adjourned to meet at 10 o'clock a. m., Tuesday, August 17, 1915.

TUESDAY, AUGUST 17, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Jas. G. Carlile.

The Rev. Mr. Carlile — Let us unite in prayer. Almighty God, Sovereign Ruler of all Thy works, we worship and adore Thee in Jesus Christ, Thy Son, our Lord, and for His sake we beseech Thee that Thou wilt grant us the presence and guidance of Thy spirit in the work of this day. We thank Thee for all that Thou hast done for us in the past; we pray Thee for Thy

help and guidance in the present; and we hope in Thy wisdom, power and love for the future. Oh, God, we pray for Thy blessing upon all the officials of this State, upon the officials of all the States of the nation, upon all in authority in the United States, at home and abroad. Keep us, we pray Thee, in Thy fear, doing Thy will. Make us a source of blessing unto ourselves and to the nations of the earth. Glorify Thyself more and more in the hearts of men and in establishing right councils over the entire earth. We ask it in the name of Jesus Christ. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal is approved as printed.

Presentations of memorials and petitions.

Mr. Foley — I offer the following memorial from the United Spanish War Veterans.

The President — Referred to the Committee on Civil Service. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Lincoln — I move that the Committee on Revision and Engrossment be discharged from further consideration of Proposed Amendment No. 804, Int. No. 711, entitled: "Proposed Constitutional Amendment, To amend Section 4 of Article II of the Constitution, in respect to the enactment of election and registration laws," that it be amended and as so amended be reprinted and recommitted to the Committee on Revision and Engrossment. The amendment proposed is this: To insert "Laws may be made providing for special registration therein on personal application before such boards or officers as the Legislature shall designate on a day or days not more than five months prior to the date of election of such electors as shall then declare under oath that they are engaged in a regular vocation or occupation which will occasion their absence from the county during each of the regular days of registration. Such laws shall require electors so specially registered to establish on the first regular day of registration their continued right to vote in the election district for which they were registered but shall not require further personal appearance." I assume that this motion will give rise to debate and I ask that it lie over.

The President — The Chair will suggest that the gentleman should ask that the bill as amended should be printed for the information of the Convention.

Mr. Lincoln — I so move, Mr. President.

The President — The resolution will lie over under the rules. The question is upon Mr. Lincoln's motion that the Proposed Constitutional Amendment to which his motion relates be printed, as

it would be if amended as he proposes, for the information of the Convention. All in favor will say Aye, contrary No. The motion is agreed to.

Mr. Westwood — Mr. President, I now call up the motion, of which I gave notice yesterday, which was to discharge the Committee on Revision and Engrossment from further consideration of the amendment commonly known as the tax article, and that it be referred to the Committee on Taxation with instructions immediately to report the same, with this amendment: Strike out the second sentence, or all after the first sentence, and insert the following: "No real estate whatsoever except that of the United States shall hereafter be exempt from taxation; but nothing herein contained shall be held to impair the validity of the existing contracts of the State." The sentence which this contemplates should be stricken out is, "Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all of the members elected to each House."

When that proposal, introduced by the Committee on Taxation, was under debate it carried the Committee of the Whole by a considerable majority. I expressed myself in that committee as hopeful that it would pass. It occurs to me now, as it did to me then, that it is wise legislation, but the fault I find with it is that it does not go far enough, and the proposal I have now to suggest in connection with that article makes it go further. In other words this proposition of mine brings up squarely the broad question whether or not any property in the State shall be privileged to be exempt from taxation. So much has been said in the very interesting and able debates upon the floor of this Convention, both last night and last Thursday, when the proposal offered by the gentleman from Albany, Mr. Barnes, was under consideration, that it would be an act of supererogation on my part to endeavor to add anything in language of my own to the statements of fundamental principles which were brought out in that debate. I will rest content on that branch of my argument by referring to four or five of the passages which were pronounced on the floor of the Convention during the course of that debate as an argument against special privilege, of which it is generally considered exemption from taxation is the most insidious. It has been said, "We began with the Declaration of Independence containing what Lincoln called the 'Proposition that all men are created equal.' That proposition was successfully tested, first by the Revolution which followed as its instant result, and eighty years later by the Civil War, and both tests were successfully met. The Federal Constitution carried out the equality proposition declaring as well the doctrine of non-entitlement to privileges as

that against the abridgment of immunity." Again, "Equal laws tend to the cultivation of independence and endeavor, to the encouragement of effort and economy, to the ennoblement of individualism and to the discouragement of mediocrity and of proletarian indulgences, in short, to the improvement of the citizen and the State." It was said by a distinguished member of the Convention from New York: "It is doubtful if a republican form of government can long endure if its fundamental law justifies a grant of privilege or immunity to any class of persons not common to all. No firm believer in representative government will ever abandon the principle that all men are equal before the law and that special privilege should be granted to none. Those who believe that a pure democracy and not a representative republic is the goal for which we should struggle, are consciously or unconsciously striving for the power to grant or withhold privilege and immunity. An examination of the history of our country will show that from our earliest days the struggle for privilege has been constant and persistent and in innumerable cases successful." It was also said, "Those who are enjoying the privileges and immunities, having had a taste, at the expense of others, constantly want more. Their appetite grows by what it feeds on. They organize, agitate and demand more favors, privileges and immunities, and they fight to obtain them at the hands of the legislature."

It was said by one of the late speakers last night: "I am in favor of the Proposed Amendment because it seeks to carry into effect the American ideal of government — justice to all and privileges and immunities to all,— or none." This is but a slight outline of the arguments which were advanced in support of Mr. Barnes' proposition, and it occurs to me that because exemption from taxation is a most insidious form of special privileges, and special immunities, the proposition which I am now advocating will meet the instant approval and support of all of those who found it in their minds to support the proposition advocated by Mr. Barnes which has been under discussion here. It seems that perhaps nothing more need be said to enlist the support of those who supported that proposition, but there are those who were opposed to the proposition offered by the gentleman from Albany, who, I have no doubt, will see in the proposition which I now present reasons which would compel their support for it. There is a distinction between the obligation or the duty which an individual owes a state, and the obligation in the working out of justice which the State owes to individuals. The individual owes to the State the duty of loyalty and moral support. It also owes to the State the duty of contribution, which, in other words, is a payment of proper taxes.

Mr. M. Saxe — I would like to know if the gentleman appreciates that the states of Oregon, Washington, California and other states, having the same proposition in their Constitution as is advocated before this body by Mr. Barnes, provide for exemption from taxation of institutions doing public work?

Mr. Westwood — Yes, Mr. President, I appreciate the truth of the fact just pronounced by Mr. Saxe.

Mr. Dunmore — Do you intend that certain references in this bill would provide that graveyards shall be liable to taxation?

Mr. Westwood — Yes, sir.

Mr. Dunmore — And if they are taxable, they could be sold for taxes?

Mr. Westwood — Yes, if they did not pay the taxes.

Mr. Wiggins — Mr. Westwood, how do you square the position which you now take with your position with respect to the Barnes proposal which is against any special privilege?

Mr. Westwood — As I understand it, Mr. Barnes' proposition is directed against any special privilege whatsoever. The principle of my proposal is that taxation is a special privilege and all those who are in favor of the Barnes proposition must be in favor of my proposition, and in addition to that —

Mr. Wiggins — Also the converse would be true, that all who are in favor of Mr. Barnes' proposition would be in favor of your proposition?

Mr. Westwood — I was just coming to that when the gentleman asked me the question. My next proposition, which I started to discuss, is that gentlemen who are opposed to Mr. Barnes' proposal, as well should favor this on account of this distinction: Every individual owes duties to the State; the State owes duties to the individual. The duty that the individual owes to the State is two-fold, generally speaking; first, the duty of loyalty; second, the duty of support. The duty that the State owes to the individual is protection, among others. Now this situation may be likened to the situation that arises in a family. Every member owes to the physical head of the family, to the family itself as represented by its visible head, the duty of loyalty and the duty, so far as the members are able to perform it, of support. But the family itself, or the head of the family, having demanded and been entitled to receive the full measure of performance of that duty without exemption, without privilege or immunity, may grant to the individual in the family such special consideration as may be necessary for the individual as a member of the whole organism for the complete success of the larger organism. So that those who are opposed to a prohibition against the granting of special privileges or immunities as an act granted by the State

to the individual should appreciate that this is a different proposition from the granting of a special immunity or privilege to excuse the duties that the individual owes to the State — the duty of loyalty and the duty of support. There is a suggestion somewhat similar to the point raised by Mr. Saxe a moment ago in respect to what the other States are doing upon this tax proposition. There has been a tendency in the legislation of all the States for a number of years past which has found reflection in the constitutions of many of the States, toward the ultimate goal which is represented by the proposal for which I am arguing. None of the States, so far as my research has disclosed to me, have gone the whole length of prohibiting all exemptions from taxation, but they are on the way, step by step, coming to that ultimate result. One of the first steps has been the adoption of uniform rolls of taxation and it may be observed that the uniform rule is stated in this language in the constitution of many of the States of the Union: "The rule of taxation shall be uniform" — from Wisconsin. "The legislature shall tax by uniform rule" — in Ohio. "All taxation shall be equal and uniform; all taxes shall be uniform on all property" — South Dakota. And similar language is to be found in the constitutions of Oregon, Texas, Wyoming, Mississippi, West Virginia, Arkansas, Tennessee, North Carolina, Michigan, Georgia, Minnesota, Oklahoma, Arizona, Colorado, Delaware, Idaho, Kentucky, any many others.

Mr. M. Saxe — Does the gentleman also appreciate that that very language which he is now pointing to is being taken out of those constitutions because it interferes with the proper development of systems of taxation? If he will look at the joint resolution recently passed by the Legislature of Indiana, and the resolution recently passed by the Legislature of Kentucky, he will see that they are trying to take out of the constitution the rule of uniformity, because uniform taxation means assessing personal property the same as real estate and you cannot do it. They have found it out. The general property tax is unworkable. The only way to reach personal property is by classification and that is the trend now in all of the States that have gone into an investigation of the subject of improved taxation.

Mr. Westwood — In answer to the gentleman's quasi-question, let me say to him that I do appreciate that real property and personal property may not be taxed according to the same system and I recognize the truth of that in providing in my proposal, "no real property whatsoever except that of the United States", etc. It may be that there is an effort to remove from the constitutions of some of the States the plain declaration of uniformity to which I have adverted but I venture to suggest that the fact that these

clauses have found entrance into the constitutions of practically all of the States well illustrates what I say, namely, that the trend of the times is and has been to bring about a situation where as much property as possible shall be denied exemption from taxation. The Committee itself in this Convention has taken a step in the direction that I urge when it has passed a provision that hereafter no exemption from taxation shall be granted except, first, by general law; and, second, by a two-thirds vote of both Houses of the Legislature. I urge the Convention to take a second step,—the ultimate step. It has been suggested in connection with this general proposition that it would be unwise for the State to require its churches, its educational and charitable institutions and public property to bear the burdens of taxation. I shall not enter upon a detailed argument upon these propositions; these matters have been thoroughly discussed. Every member of this Convention has had arguments on these propositions, *pro* and *con*, brought to his attention; so it will suffice for me merely to outline what the arguments are. As to churches, every one will admit that the church institution receives the same protection at the hands of government as the individual, and that it should feel its obligation to the State, the same obligation the individual owes the State, and should give the State loyalty and support; and it would seem that the members of churches would be the last men and women in the length and breadth of the State of New York to contend for any other rule or doctrine except that the churches should render to the support of government which protects them, the same kind of contribution that they as individuals render. As to educational institutions and charitable institutions, the figures are interesting. Much hue and cry has been raised that were the charitable and educational institutions of the State to be taxed, so great a burden, so great an added financial burden would rest upon the shoulders of such institutions as to lead to their failure. I am confident that if the members of this Convention will go deeply into the figures, it will be found, as a very general rule, subject to but few exceptions, that the item of taxes which educational and charitable institutions would be compelled to pay were this proposal to be adopted, would be so small in proportion to the other fixed expenses of such institutions as practically to be negligible. I have worked the figures out as to some such institutions. I have worked the figures out as to some church institutions and the members of the Convention may be surprised to learn that where these figures have been worked out in the ordinary case, not taking an exceptional illustration, it is shown that the man who contributes to the support of his church one hundred dollars a year would, if his church and its activities were taxed

according to this proposal, contribute one hundred and three or one hundred and four dollars a year, and that small difference certainly would not justify the membership of the churches of America in opposing the adoption of a proposition which makes for uniformity and against privilege.

Much has been said, Mr. President, on this proposition, that it will be unpopular and would defeat the Constitution; that it could not possibly be carried. I desire to state now that it is a question so different from any of the questions that will be finally probably passed by this Convention, that it were proper that the amendment that I propose should be submitted separately. When the revised new Constitution was submitted twenty-one years ago, the Convention submitted the revised Constitution, which was one proposition, and submitted the canal question, which was the second proposition, and submitted the apportionment question, which was the third proposition. So far as I have thus far in the deliberations of this body been able to discover, there is no demand that any more than the one proposition be submitted this year, namely the revised Constitution. But in view of the fact that this differs so much in character from the balance of the propositions that will be submitted, I desire to give notice now that in case the motion that I have made carries, I shall follow that with a motion, which will without doubt be referred to the Rules Committee, requiring the separate submission of this tax proposition at the polls this fall. Now, much has been said, as I have indicated, that there is a widespread feeling against this proposal. Little has been pointed out as to the support that this broad proposal has received. I hold in my hand a short editorial of a dozen lines from probably the leading daily newspaper in the State of New York outside of Greater New York. Let me read it: "The delegate from Chautauqua county has offered in the Constitutional Convention an amendment which reads as follows: 'Article III is hereby amended by adding a new section, to be appropriately numbered and to read as follows: "No real property whatsoever, except that of the United States, shall hereafter be exempt from taxation."' That certainly goes to the root of the matter. Now, let the debate begin! The *Express* votes Aye." My friends suggest that perhaps the members of the Convention may not recognize the name *Express*, and I say that that is the *Buffalo Express*. I had some curiosity to know how the Grange would look at this proposition, and I directed a letter to Mr. Vary of Watertown, who is the grand master of the Grange of the State of New York. I did not send to him an argument upon this proposition. I sent to him a printed copy of the proposal and asked him how the organization of the Grange would look at it, and received

from him this answer: "Your favor received and noted. If anything is to be placed in the Constitution regarding taxation, it seems to me that your proposition to abolish exemptions from taxation would be a very proper thing. I know of no reason why any property should be exempt from paying its just share toward the support of the government. To be sure, I believe it to be highly important that the wording of any proposition relating to taxation should be very carefully done. I am in hopes that the consensus of opinion of the many great minds that have to do with the Constitutional Convention will be able to formulate some plan of taxation that will be equal and just to all the people. Our order has always stood for the principle of having all property pay its equal and just share for the support of the Government." (Signed.) W. H. Vary.

I hold in my hands copies of the resolutions from a couple of other Granges in the western part of the State, unsolicited by me, no suggestion having come from me that such a resolution should be passed, and a couple of letters which I selected out of a considerable pile from individuals who voluntarily wrote me expressing the opinion that the sentiment in their community was considerable and strong in favor of the passage of this or a similar proposition. Those are, in the briefest outline, Mr. President, the reasons why it seems to me both the adherents and the opponents of Mr. Barnes' proposition may unite, should unite in support of this; and in briefest outlines the answer to one or two of the objections which have heretofore been raised against this very broad proposition that I am advocating. I assume that at this time the Convention will not want to debate this proposition. I make that assumption because I observed the manner in which Mr. Nixon's somewhat similar proposal was treated in Committee of the Whole a week ago, and therefore I desire to move the previous question, but will, of course, withhold that motion in case anybody desires to be heard in support of or in opposition to my motion.

Mr. M. Saxe — Mr. President I merely want to say on behalf of the Committee on Taxation that the question of exemption was given most serious and most careful consideration by that Committee and, as I recall, with the exception of two members of the Committee, the Committee was against removing all exemptions. Two public hearings were held and they were well attended. The question was thoroughly discussed by distinguished and intelligent representatives of both sides of the question. The matter has been passed upon by the Committee of the Whole and I trust that the action of the Convention will now sustain both the action of its Committee on Taxation and its Committee of the Whole. I trust the motion of Mr. Westwood will not prevail.

The President — All in favor of the resolution will say Aye.

The President — Contrary, No. The Noes have it and the resolution is lost.

Mr. Westwood — I demand the ayes and noes.

The President — It appears that the demand is not seconded.

Mr. Westwood — Mr. President, what is required to second it?

The President — Fifteen members of the Convention —

Mr. Westwood — To rise in their seats?

The President — Yes.

Mr. Brackett — Mr. President, I am always in favor of a man having a roll call if he wants it.

The President — There is a sufficient number up. The Secretary will call the roll.

Mr. Angell — Mr. President, may the question be read before the roll call is taken?

The President — The Secretary will read the resolution to the Convention.

The Secretary — By Mr. Westwood: Strike out all of section one after the first sentence and insert the following: No real property whatsoever except that of the United States shall hereafter be exempt from taxation, but nothing herein contained shall be held to impair the validity of the existing contracts with the State.

The President — The Secretary will call the roll.

Those who voted in the affirmative were:

Messrs. Barnes, Barrett, Boekes, Franchot, Leggett, Lincoln, Nixon, Quigg, Sanders, Sears, Standart, Westwood, Whipple.

Those who voted in the negative were:

Messrs. Adams, Ahearn, Aiken, F. C. Allen, Angell, Bannister, Bayes, Beach, Bell, Berri, Blauvelt, Brackett, Brenner, Burkan, Clearwater, Clinton, Coles, Cullinan, Curran, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Foley, Ford, Green, Greff, Griffin, Haffen, Hale, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leitner, Lennox, Linde, Low, McKean, McLean, Mandeville, Marshall, F. Martin, L. M. Martin, Mathewson, Meigs, C. Nicoll, D. Nicoll, Nye, J. L. O'Brian, O'Connor, Olcott, Parker, Parmenter, Parsons, Pelletreau, Reeves, Rhees, Rodenbeck, Ryder, Sargent, M. Saxe, Sharpe, Shipman, Slevin, A. E. Smith, E. N. Smith, R. B. Smith, T. F. Smith, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Van Ness, Wadsworth, Wagner, R. E. Weber, Weed, C. J. White, Wickersham, Wiggins, Williams, Winslow, C. H. Young, F. L. Young, President.

When Mr. Brackett's name was called he said:

Mr. President, I ask to be excused from voting long enough to say just this: With the doctrine of non-exemption from taxation

I have the fullest sympathy, and I would like to give it the fullest support. If we were here starting a new government, that policy would and should be adopted. But the system of exemption as it exists now has existed so long and has become so thoroughly grounded in our system and so many rights have grown up, built upon that system, that we cannot root it out without grave disturbance and grave trouble. If everything was subject to the taxation necessary for the privileges of the State, the amount of tax that any one person would suffer would be insignificant and need not enter into the equation. But, for the reason stated, for the reason that we cannot violently uproot a great tree and still have it live, I must vote in the negative.

The President — The Clerk will announce the result.

The Secretary — Ayes, 13; Noes, 102.

The President — The resolution is lost.

Reports of standing committees.

Mr. Rodenbeck — I offer a report from the Committee on Revision and Engrossment. May I say that the Committee met last night at the close of the session and has acted on all bills before the Committee now except three and the Committee will make a further report later in the day.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment to which was referred Proposed Constitutional Amendment introduced by the Committee on Education No. 801, introductory No. 698, entitled, Proposed Constitutional Amendment, to amend section 1 of Article IX of the Constitution, in relation to the supervision and control by the State of the education of children, reports the same as examined and found correctly engrossed.

The President — The question is on agreeing to the report of the Committee. Those in favor will say Aye, contrary No. The report is agreed to and the Proposed Amendment will be put on the third reading calendar. The Chair lays before the Convention a report of the Committee on Revision and Engrossment upon Proposed Amendment to the Constitution No. 747, introductory No. 289, to amend Section 28 of Article III of the Constitution, in relation to the granting of extra compensation. The question is upon agreeing to the corrections reported by the Committee on Revision. The Secretary will state the corrections.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment to which was referred Proposed Constitutional Amendment No. 747, introductory No. 289, introduced by Mr. R. B. Smith, entitled, Proposed Constitutional Amendment, To amend Section 28 of Article III of the Constitution, in relation to the granting or allowing of extra compensation by legislative bodies or auditing boards, bodies or officers, reports the same

with the following recommendation: In line 8, after the word "officer," strike out the comma.

The President — The question is on agreeing to the report of the Committee. All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to and the comma is deleted.

The Secretary — Also No. 793, introductory No. 707, introduced by the Committee on Relations to Indians, entitled Proposed Constitutional Amendment, To amend Section 15 of Article I of the Constitution of the State of New York, in relation to Indians, reports the same with the following recommendation: Page 2, line 5, strike out the comma after the word "state".

The President — The question is on agreeing to the report of the Committee. All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to.

The Secretary — Also 775, introductory No. 291, introduced by Mr. R. B. Smith, entitled, Proposed Constitutional Amendment, To amend article III and Section 4 of Article IV of the Constitution, in relation to voluntary sessions of the Legislature and the Assembly, reports the same with the following recommendations: Page 1, line 4, after the word "may", strike out the comma and insert the comma after the word "motion" in the same line. Page 1, line 7, after the word "may" strike out the comma and insert a comma after the word "motion" in the same line. Page 1, line 9, strike out the comma after the word "section". Page 2, line 7, strike out the comma after the word "senate".

The President — Two bills have been confused and combined in the printing of the proposed amendment now before the Convention and it will be necessary to lay it aside for a correction of the printing. Reports of select committees. Third reading. Unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole upon special order of the morning, the report by the Committee on Public Utilities. Will Mr. Steinbrink take the Chair?

(Mr. Steinbrink takes the Chair.)

The Chairman — The Convention is now in Committee of the Whole on the special order of the day. The Clerk will read.

The Secretary — No. 767, General Order No. 38, by the Committee on Public Utilities. To amend Article V of the Constitution by adding a new section thereto, relating to public service commissions.

Mr. Hale — Mr. Chairman and gentlemen of the Convention: The proposal of the Committee on Public Utilities is not a long nor an involved proposal. About the only thing to be said in

respect to its extent is that it is a recognition in conservative language copied from the method of recognition that has become time-honored in the Constitution of an existing institution and more especially it is true of an institution which in its origin was simply statutory. If the delegates who are not familiar with the text of the Constitution will turn to Article VI, Sections 14 and 15, they will find the basis of the provision suggested by the Committee in the continuance of the county courts and of the surrogate's courts of the State. I will read the first sentence of Section 14 of Article VI: "The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms." Section 15 uses precisely similar language with respect to the surrogates' courts. The first sentence of the proposed section, which is an amendment of Article V, is: "The existing public service commissions are continued and the commissioners now in office shall hold their offices until the expiration of their terms."

Now, the Committee by the employment of this language has not sought in any wise to make the tenure of office of the Public Service Commissioners, whether in one district or the other, any more certain than would come from any other provision fixing the stated term, for example, for five years, or ten years, or seven years, but simply that these commissioners who are now in office shall continue to hold their offices, subject of course to all the rights of the authorities of the State, properly invoked, to remove them. If any one cares to look forward in the proposal, lines 11, 12 and 13 on page 2, he will see at once that "Any commissioner may be removed by the Senate upon the recommendation of the Governor, stating the grounds upon which such removal is recommended," which provision applies, of course, as much to commissioners now in office as it would apply to commissioners who are to be appointed in the future if this section should be adopted. Now, what is the reason — because I assume that the Convention will want to feel that there is a reason — why the public service commissions should continue; not only that, but why the continuance of them should be provided for in the fundamental law. I am not one who believes that it is a matter of extreme importance. The commissions were created by the Legislature. They were created, in effect so far as the regulation of gas and electricity is concerned, in the year 1905, because in that year was the establishment of the Commission of Gas and Electricity. The public service commissions in their present form were created in 1907, and the people of the State have had the opportunity, of course, to determine whether on the whole this commission has been a useful tribunal in dealing with the important subjects that are committed

to their control or supervision. You go back to the time prior to 1905 and what do you find? You find every year pressure upon the Legislature in regard to the matter of rates of the public service corporations, some in the matter of railroads, but more in the matter of charges of gas companies and electric light companies. You find, especially in the matter of the issue of stocks and bonds, that there was great dissatisfaction and great cause for dissatisfaction in the fact that there was nothing in the way of a conservative control. This is a matter much longer in coming to its present shape even than the act of 1905, because as far back as the Governorship of Mr. Cleveland, thirty-one years ago this past winter, the matter had already begun to receive the attention of the executives of the State. And I am going to ask the indulgence of the members of the Committee while I read from the annual message of Grover Cleveland to the Legislature, in the year 1884. It is a little longer than I wish it were — than I like to read, but it is so fundamental and goes so thoroughly into the reasons why the State of New York many years afterwards, after many years of thought and deliberation, concluded that it was wise to adopt the counsel and recommendation of Grover Cleveland, uttered as long as thirty-one years ago. Now, in his annual message that year, 1884, Grover Cleveland said: "The action of the Board"—and he meant by that the Board of Railroad Commissioners—"in requiring the filing of quarterly reports by the railroad companies, exhibiting their financial condition, is a most important step in advance, and should be abundantly sustained. It would, in my opinion, be a valuable protection to the people if other large corporations were obliged to report to some department their transactions and financial conditions. The State creates these corporations upon the theory that some proper thing of benefit can be better done by them than by private enterprise, and that the aggregation of the funds of many individuals may be thus profitably employed. They are launched upon the public with the seal of the State in some sense upon them. They are permitted to represent the advantages they possess and the wealth sure to follow from admission to membership. In one hand is held a charter from the State, and in the other is proffered their stock. It is a fact, singular though well established, that people will pay their money for stock in a corporation engaged in enterprises in which they would refuse to invest if in private hands. It is a grave question whether the formation of these artificial bodies ought not to be checked or better regulated and in some way supervised. At any rate they should always be kept well in hand, and the funds of its citizens should be protected by the State which has invited their investment. While the stockholders are the owners of the

corporate property, notoriously they are oftentimes completely in the power of the directors and managers, who acquire a majority of the stock and by this means perpetuate their control, using the corporate property and franchises for their benefit and profit, regardless of the interests and rights of the minority of stockholders. Immense salaries are paid to officers; transactions are consummated by which the directors make money while the rank and file among the stockholders lose it; the honest investor waits for dividends and the directors grow rich. It is suspected, too, that large sums are spent under various disguises in efforts to influence legislation. It is not consistent to claim that the citizen must protect himself by refusing to purchase stock. The law constantly recognizes the fact that people should be defended from false representations and from their own folly and cupidity. It punishes obtaining goods by false pretenses, gambling and lotteries. It is a hollow mockery to direct the owner of a small amount of stock in one of these institutions to the courts. Under existing statutes, the law's delay, perplexity and uncertainty leads but to despair. The State should either refuse to allow these corporations to exist under its authority and patronage, or acknowledging their paternity and its responsibility, should provide a simple, easy way for its people whose money is invested, and the public generally, to discover how the funds of these institutions are spent, and how their affairs are conducted. It should at the same time provide a way by which the squandering or misuse of corporate funds would be made good to the parties injured thereby. This might well be accomplished by requiring corporations to frequently file reports made out with the utmost detail, and which would not allow lobby expenses to be hidden under the pretext of legal services and counsel fees, accompanied by vouchers and sworn to by the officers making them, showing particularly the debts, liabilities, expenditures and property of the corporation. Let this report be delivered to some appropriate department or officer, who shall audit and examine the same; provide that a false oath to such account shall be perjury and make the directors liable to refund to the injured stockholders any expenditure which shall be determined improper by the auditing authority. Such requirements might not be favorable to stock speculation, but they would protect the innocent investor; they might make the management of corporations more troublesome, but this ought not to be considered when the protection of the people is the matter in hand. It would prevent corporate efforts to influence legislation; the honestly conducted and strong corporations would have nothing to fear; the badly managed and weak ought to be exposed." Now, that was the fundamental basis of the agitation, or rather of the constant

urgings of the governors of the State upon the attention of the Legislature, namely, the control over the issue of capital stock and of bonds. And if anybody remembers the history of the time just prior to the creation of the Public Service Commissions he will remember that the abuse in this matter of the issue of, not only stock in railroads and street railroad corporations, but of the bonds of those corporations was the immediate motive for the enactment of the Public Service Commissions Law. It was not so much the question of the regulation of service and the fixing of reasonable rates in its origin, as it was the protection of the investing public. If anything has come to be well recognized by those who are familiar with the workings of the commissions to-day, it is that while the matter of regulation of service to see that it is adequate, to see that it is what the public is entitled to demand of the public carrier, of the gas company, of the electric light company, or the telephone company,—not only to see that that is an important thing, but more important still is it to be quite sure that when bonds are issued by these corporations, when stocks are issued under the approval of the Public Service Commission, and therefore the approval of the State, that the transactions should be honest, they should be fair; they should be real and that they should be a protection, not an insurance, but a protection to the investing public. Now that was in 1884, which was a good many years ago—a third of a century. Two years later, Governor Hill said this in his annual message to the Legislature: “Corporations organized under the laws of this State, with few exceptions, have the power of issuing shares of stock for less than par value. The result is that the aggregate amount of shares of corporations which avail themselves of this power represents a much greater sum than the property of the corporations cost or is worth. If dividends are paid upon shares so issued rates must be charged greatly exceeding rates necessary to be charged to pay like dividends upon the capital actually invested in the corporations. Shares so issued and purchased by investors are frequently found not to represent values and to be worthless.

“With few exceptions there is no limit to the amount of bonds which a corporation organized under the laws of this State may issue. There being no limit upon the amount of bonds or upon the price at which they may be sold, the interests of shareholders and also of bondholders are often rendered of little value by issues of bonds exceeding the value of the property of the corporation.

“Some legislation seems necessary to remedy these evils, and it is believed that a statute prohibiting the issue of shares of stock except upon the receipt by the corporation of their par value in

